Please
handle this volume
with care.

The University of Connecticut
Libraries, Storrs

332.14
P14
35443

BOOK 332.14.P14 c.1
PAGE # WORK OF CORPORATE TRUST
DEPARTMENTS
3 9153 00095083 4

This Book may be kept out

TWO WEEKS

THE WORK OF CORPORATE TRUST DEPARTMENTS

BY

R. G. PAGE

VICE PRESIDENT, BANKERS TRUST COMPANY

AND

PAYSON G. GATES

ASSISTANT SECRETARY, BANKERS TRUST COMPANY

NEW YORK
PRENTICE-HALL, INC.
1927

332.14
P14

COPYRIGHT, 1926, BY
PRENTICE-HALL, INC.
All rights reserved

PRINTED IN THE UNITED STATES OF AMERICA

PREFACE

The tendency of modern financial institutions is toward specialization. To-day, the typical trust company or bank in a financial center is a complex organization composed of a number of departmental groups, each busy in its own sphere of activities. The intensive study by each department of its special problems has featured the development of banking institutions in recent years. This concentration on technical requirements, while in no wise lessening the desirability of a broad knowledge of banking, does emphasize the need and the value of trained specialists.

The reading matter on the subject of the fiduciary services of trust companies and banks on behalf of corporations, and in relation to corporate securities, is somewhat limited. Several excellent studies of corporate trusts and certain special phases of corporate agency functions have been made by lawyers of high standing. In the standard books on banking practice some space has been allotted to the trust department. Valuable collateral reading is to be found, also, in the various textbooks on investments and corporation finance. But there is little material in printed form from which those engaged in this line of work can learn the viewpoint and observe the operating methods of others in the same field.

The purpose of this book is to discuss the various services rendered by corporate trust and corporate agency departments, and to describe the methods of a large financial institution in this connection. In treating these subjects, emphasis has been laid on *how* things move, but the reasons *why* have not been overlooked. A study of this nature might be carried to much greater length. For instance, the legal questions which arise could be discussed authoritatively only by counsel, and such discussion would result in substantial expansion of the book. In respect of legal matters the authors have been content, in most instances, to give quotations from the writings of lawyers of recognized standing and to make references and citations which will assist the reader to an understanding of

35943 1511 1/10/23

the point involved. The aim has been to include such material as will be useful to trust officers and others charged with carrying on the corporate fiduciary activities of their institutions. In reaching a decision as to the relative value of the various subjects, the authors have been guided by their own practical experience and by the valued suggestions of their banking associates and their friends in the legal profession. While written chiefly for those engaged in this special field, it is felt that enough of a background has been given to make the book helpful to students specializing in banking and kindred subjects.

With the kind permission of The Bell Telephone Company of Pennsylvania, one of its mortgages has been used as a basis for discussion in the chapters on the form of corporate mortgages. This mortgage, with names and dates changed, but substantially as executed, has been reprinted in the appendix. Likewise, other documents which appear throughout the book conform, except for minor alterations, to those used in actual practice. The records illustrated are those of the Bankers Trust Company, New York.

The authors are appreciative of the assistance derived from the various sources referred to in the text. Grateful acknowledgment is due to the authors' associates at the Bankers Trust Company who coöperated in reading and revising the text of many chapters, and to Mr. Roberts Walker and Mr. Jesse E. Waid, of Messrs. White & Case, for much valuable assistance in both the practical and the legal aspects of the subject.

CONTENTS

CHAPTER PAGE

I—Corporate Fiduciaries; Origin, Growth, and Organization 1

Early history; Development; Federal Reserve Act (with respect to fiduciary powers); Supreme Court decision; Departmental organization of trust company; Fiduciary departments; Custody; Personal trust; Corporate trust; Corporate agency departments; Reorganization; Stock transfer; Stock registration; Bond registration; Coupon paying; Joint facilities; General.

II—Corporate Trust Services; Trusts Based on the Corporate Mortgage . . . 12

Definition of mortgage; Types of mortgages; Indentures other than mortgages; Collateral trust bonds; Equipment obligations; Unsecured obligations; Variations in titles; Individual trustees for corporate mortgages; Qualifications of trustees; Trustee's duties.

III—Acceptance of Corporate Trusts . . 22

Securing business; Preliminary negotiations; Investigation of proposed trusteeships; Qualification in states; Individual and corporate co-trustees; Restrictive state statutes; Conflicting liens; Examination of form of mortgage; Execution of mortgage; Supporting papers; Examination of mortgage by the trustee.

IV—Corporate Trust Records 34

Corporate trust records; Security transactions; Vault control; Cash records; Miscellaneous records.

V—The Corporate Mortgage; Preamble, Granting Clause, and Form of Bond . 75

The typical mortgage; Parties and preamble; Form of bond; Granting clause; Article I; Authorized issues; Series of bonds; Adjustability; Execution of bonds; Trustee's certificate; Registration, transfer, and exchange; Exchange of denominations; Charges for registration and exchange; Who is deemed owner; Duplicate bonds; Certificates of indebtedness; Temporary bonds and interim certificates; Exchange of temporary for definitive bonds; Issuance before recording.

VI—Issue of Bonds Under Corporate Mortgages 90

Trustee's responsibility in certifying; Three principal purposes of bond issue; The initial issue; Reimbursement for capital expenditures; Acquisition of property; Acquisition

CHAPTER PAGE

VI—Issue of Bonds Under Corporate Mortgages (*continued*) 90

of securities; Pending construction; Refunding; Issues for permanent additions and betterments; General restrictions; No default; Percentage of cost; Additions and betterments; New property; Earnings; Evidence of compliance with restrictions; Resolutions; Order; Certificates; Opinion of counsel; Earnings statement; Balance sheet; Issuance of bonds against cash; Authority from public body; Receipts and counsel's approval; Scope of the trustee's examination.

VII—Covenants of the Mortgagor . . . 102

Reasons for covenants; Trustee's interest in covenants; "Formal" covenants; Other covenants; As to the underlying bonds; Taxes assessed against bondholders; Insurance; Net quick assets; Covenants restricting dividends or bond issues; Annual financial statements; Equipment; Sales; Appraisal; Maintenance and renewal; Covenants to be calendared; Mortgagor's breach of covenants.

VIII—Sinking Funds and Redemption of Bonds 114

The sinking fund; Sinking funds vary with business of mortgagor; Bases for sinking funds; Operation of sinking funds; Acquisition of bonds; Measure of payment; Application of fund; Inviting tenders; Acceptance or rejection of tenders; Offer of bonds by mortgagor; Drawing by lot for redemption; Custody of acquired bonds; Accrued interest and expenses; Surrender of bonds in lieu of cash; Mortgages authorizing bonds in series; Capital expenditure alternative; Discussion of "Telephone" mortgage provisions; Large bond drawing; Rights of bondholder and company; Redemption notice; Affidavits of publication; Interest loss through failure to present bonds.

IX—Pledged Securities; Releases; Supplemental Mortgages 128

Control of pledged securities; Possession of pledged securities; Registration; Nominees of trustee; Directors' shares; Pledge subject to other mortgages; Dividends and interest; Payment on account of principal; Voting pledged stock; Proxy limitations; Subsidiary or controlled companies; Protection of pledged stock; Reorganization or merger; Release of portions of mortgaged property; Purpose of release provisions; Restrictions imposed; Conditions of release; Form of mortgagor's application; Substitution of property on "utility" basis; Deferred payments; Eminent domain; Abandonment of mortgaged property; Underlying lien; Application of proceeds; Release of property during receivership; Supplemental indentures.

X—Defaults and Remedies 143

"Events of default"; Procedure of trustee; Sale under foreclosure; Junior security-holders; Activities during foreclosure proceedings; Computation of amount due; Final decree and order; Final distribution; Disposition of endorsed bonds; General.

CHAPTER PAGE

XI—The Trustee Clauses; Miscellaneous Provisions 152

Acceptance of trust; Examining the protective clauses; Liability of trustee; Purpose of immunity clauses; Economics of situation; Customary provisions; Reliance upon certificate; Interest on cash balances; Resignation or removal of trustee; Individual trustee; Miscellaneous provisions; Merger and consolidation; Evidence of ownership of bonds; Defeasance; Satisfaction guide; Matured coupons; Periodcal cremation of securities; Definitions; Supervision by bankers; Immunity of stockholders, etc.; Testimonium; Signatures; Acknowledgments.

XII—Equipment Trusts; Collateral Trusts; Unsecured Issues 165

Equipment trusts; Philadelphia plan; Conditional sale plan; Reasons for Philadelphia plan; Cash deposit with trustee; Covenants of railroad; Comparison between Philadelphia plan and conditional sale arrangement; Collateral trust indentures; Unsecured issues.

XIII—Miscellaneous Trust Functions . . . 170

Miscellaneous functions; Interim certificates; Bankers' shares; Investment trusts; American shares; French bearer certificates; Foreign insurance trusts; Registrar of debentures, etc. (for identification); Conversions; Fiscal agent for municipalities, etc.; Paying agencies.

XIV—Corporate Agency Services; Reorganization Department 187

Scope of corporate agency services; Practice—large vs. small companies; Investigating offers of new business; Reorganization department; Corporate reorganization; Corporate readjustments; Capital subscriptions; Reorganizations; Protective committees; Deposit agreement; Activities of depositary; Sub-depositaries; Listing of certificates of deposit; Registration of certificates of deposit; Mailing and publishing of notice; Relationship between depositary and committee's secretary; Interest and other payments; Acceptance of certificates of deposit of other committees; Certification as to deposits; Summary of depositary's functions prior to reorganization; Time limit for deposits.

XV—Reorganizations (continued) 206

Presentation of the plan; Dissents; Joint reorganization committee; Adoption of plan; Assessments; Consummation of reorganization; Distribution of new securities; General; Termination of depositaries' duties.

XVI—Corporate Readjustments, Capital Subscriptions, and Reorganization Department Records 213

Readjustment and reorganization compared; Capital subscriptions; Subscription warrant; Purchase certificate; Reorganization department records.

CHAPTER PAGE

XVII—Stock Transfer Department 227

Stock transfer department; Stock certificates; Appointment of transfer agent for corporation; Documents to be received; Original issues of stock; Voting trust certificates; Transfers; Power of substitution; Assignments; Guarantee of signatures; Classification of transfers; Individuals and partnerships; Tenants; Corporations; Fiduciaries; Estate and inheritance taxes; Co-transfer agencies; Transfer Department records; Records; Control of unissued stock certificates; Stockholders' right to inspect records; Closing of transfer books; Annual and special stockholders' meetings; Dividends; Dividend orders; Dividend disbursing agent.

XVIII—Stock Registration, Bond Registration, and Coupon Paying Departments . 272

Stock registration; Appointment; Relations with transfer agent; Records; Original issues; Signing and audit; Certificates of deposit, etc.; Stop transfers and duplicate certificates; Bond registration; Full registration; Registration as to principal only; Records; Coupon paying; Receipt of funds; Relations with corporate trust department; Federal tax law; Records; Audit; Payments for correspondents; Coupons from called bonds; Retention of canceled coupons; Stop payments; Return of coupon money.

XIX—Fees 302

Fees; Increased volume of business; Decreased expenses; Increased compensation; Standardization of rates; Corporate trust fees; Trustee under corporate mortgages, etc.; Trustee of foreign insurance companies; Trustee or registrar of industrial note issues; Fiscal agent under foreign governmental issues; Corporate agency fees; Transfer agent of stock; Registrar of stock; Dividend disbursing agent; Registrar and transfer agent of bonds; Paying agent of coupons or registered interest; Fiscal agent (returns to Collector of Internal Revenue); Reorganization department fees; Rates in New York City; Fee records and billing; Disbursements.

Bibliography 319

Appendix I 323

Form of Corporate Mortgage

Appendix II 393

Form of Equipment Trust (Philadelphia Plan)

Appendix III 421

Form of Deposit Agreement

Appendix IV 439

Listing Requirements of New York Stock Exchange

Index 457

LIST OF ILLUSTRATIONS

		PAGE
Fig. 1.	Organization Chart	5
Form 1.	Mortgage Examination Guide	30
Form 2.	History of Trust	35
Form 2A.	History of Trust (supplementary sheet)	36
Form 3.	Record of Bonds Issued	37
Form 4.	Summary Sheet	38
Form 5.	Exchange Sheet	40
Form 5A.	Exchange Ticket	41
Form 5B.	Exchange Record Title Sheet	43
Form 6.	Redemption Sheet	44
Form 6A.	Redemption Ticket	45
Form 7.	Securities Ledger	46
Form 7A.	Securities Ledger (suitable for active accounts)	47
Form 8.	Corporate Blotter	48
Form 9.	Certification Blotter	49
Form 9A.	Certification Slip	49
Form 10.	Vault Deposit Ticket	50
Form 10A.	Vault Deposit Posting Ticket	51
Form 11.	Vault Delivery Ticket	52
Form 11A.	Vault Delivery Posting Ticket	53
Form 12.	Temporary Deposit Ticket	54
Form 12A.	Delivery of Temporary Deposit Ticket	55
Form 13.	Temporary Withdrawal Ticket	56
Form 13A.	Temporary Withdrawal Posting Ticket	57
Form 13B.	Deposit of Temporary Withdrawal Ticket	58
Form 13C.	Deposit of Temporary Withdrawal Posting Ticket	59
Form 14.	Memorandum of Cancellation	60
Form 15.	Memoranda of Splits	61
Form 16.	Property Card (Bonds)	62
Form 17.	Property Card (Stock)	62
Fig. 2.	Security Stencil (Stock)	63
Fig. 3.	Security Stencil (Bonds)	63
Form 18.	Collection Register	64
Fig. 4.	Stencil Title Plate	65
Form 19.	Customer's Verification	65
Form 20.	Cash Ledger	67
Form 21.	Cash Journal	68
Form 22.	Memoranda Ticket	68
Form 22A.	Memoranda Ticket (for Redemptions)	69

		PAGE
Form 23.	Credit Ticket	70
Form 24.	Charge Ticket	70
Form 25.	Proof Sheet	71
Form 26.	Trust Check	72
Form 27.	Documents Executed Slip	73
Form 28.	Tickler Card	73
Form 29.	Pending Card	74
Form 30.	Vault Index	74
Fig. 5.	Form of Coupon Bond	79
Form 31.	Research Sheet	100
Form 32.	Personal Property Tax Refund Application	105
Form 33.	Insurance Record	107
Form 34.	Declaration of Trust	130
Form 35.	Nominee Card	130
Form 36.	Mortgage Satisfaction Guide	160
Form 37.	Cremation Affidavit Certificate	163
Fig. 6.	Interim Receipt	173
Fig. 7.	Bankers' Shares Certificate	175
Fig. 8.	"American Shares" Certificate	178
Fig. 9.	Certificate of Deposit (Bonds)	194
Fig. 10.	Certificate of Deposit (Stock)	194
Fig. 11.	Subscription Warrant	216
Fig. 12.	Purchase Certificate	218
Form 38.	Reorganization Counter Ticket	220
Form 39.	Temporary Receipt	221
Form 40.	Reorganization Record	222
Form 41.	Record of Depositors	222
Form 42.	Vault Marker	223
Form 43.	Delivery Record	224
Form 44.	Requisition for Stock	224
Form 45.	Reorganization Counter Ticket	226
Form 46.	List of Depositors	226
Form 47.	Subscription Record	225
Fig. 13.	Common Stock Certificate	228
Fig. 14.	Preferred Stock Certificate	232
Form 48.	Resolution Appointing Transfer Agent	234
Form 48A.	Resolution Appointing Transfer Agent (with co-transfer Agent)	236
Fig. 15.	Voting Trust Certificate	241
Form 49.	Counter Ticket (General)	252
Form 49A.	Counter Ticket (Special)	253
Form 49B.	Temporary Counter Ticket	253
Form 50.	Transfer Record	254
Form 50A.	Report of Transfers	254

		PAGE
Form 51.	Stock Ledger	256
Form 52.	Stock Ledger Trial Balance	257
Form 53.	Record of Balance Changes between Ledgers	258
Form 54.	Record of Original Issues	259
Form 55.	Control Sheet — Unissued Certificates	259
Form 56.	Stockholders' List	261
Form 57.	Dividend Order	262
Form 58.	Resolution Appointing Dividend Disbursing Agent	263
Form 59.	Dividend Check	263
Form 60.	Lost Dividend Check Search Sheet	264
Form 61.	Indemnity Letter	265
Form 62.	Stock Dividend Record	266
Form 62A.	Stock Dividend, Original Issue Record	267
Form 62B.	Stock Dividend, Post Office Receipt	267
Form 63.	Stop Transfer	270
Form 64.	Resolution Appointing Registrar (Stock Outstanding Prior to Appointment)	272
Form 65.	Registration Sheet (One Registrar)	275
Form 66.	Registration Sheet (Two Registrars)	276
Form 67.	Record of Original Issue	277
Form 68.	Appointment of Bond Registrar	278
Form 69.	Counter Receipt	282
Form 70.	Registration Record (Principal Only)	283
Form 71.	Registration Record (Principal and Interest)	283
Form 72.	Ledger Sheet	284
Form 73.	Cancellation and Certification Sheet	285
Form 74.	Report to Issuing Company	286
Form 75.	Registered Interest List	287
Form 76.	Registered Interest Check	287
Form 77.	Coupon Envelope	291
Form 78.	Return Envelope	292
Form 79.	Check Register	292
Form 80.	Coupon Ledger	294
Form 81.	Tax Deduction Ticket	294
Form 82.	Coupon Account, Statement and Verification	295
Form 83.	Daily Advice	297
Form 84.	Monthly Statement and Receipt	298
Form 85.	Redeemed Bond Notice	299
Form 86.	Fee Basis Sheet	311
Form 87.	Commission Ledger	313
Form 88.	Commission Work Sheet	313
Form 89.	Commission Bill	315
Form 90.	Disbursement Voucher	316
Form 91.	Stock Certificates Issued Sheet	317

THE WORK OF CORPORATE TRUST DEPARTMENTS

CHAPTER I

CORPORATE FIDUCIARIES; ORIGIN, GROWTH, AND ORGANIZATION

Early history.—The extensive development of the services now rendered by trust companies and other corporate fiduciaries is essentially modern; yet the exercise of trust powers by financial institutions dates from an early period in our national history. In the *New York Evening Post* of August 6, 1822, The Farmers' Fire Insurance and Loan Company (now The Farmers' Loan and Trust Company) announced that, pursuant to a charter granted by the legislature, the company was prepared "to receive, take, possess, and stand seized of any and all property that may be conveyed to them in TRUST, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as any other trustee or trustees might or could lawfully do. The TRUST property [continues the announcement] will be kept, as the Charter prescribes, wholly separate from other concerns of the Company, and cannot, in any event, be made liable for its losses or engagements."[1] Some years later, in 1836, The Pennsylvania Company for Insurances on Lives and Granting Annuities which had been established in the insurance field in Philadelphia since 1812, was given power to add trust business to its activities. Meanwhile, the New York Life Insurance and Trust Company had been chartered. This institution has since merged with the Bank of New York (established 1784), under the name of Bank of New York & Trust Company. Other financial institutions in the eastern

[1] H. W. Lanier, "A Century of Banking in New York, 1822-1922," p. 279. (Courtesy of Farmers' Loan & Trust Company to the authors.)

states dating from this early period have become trust companies or have acquired trust powers.

It should be noted that each of these pioneers combined insurance with trust business, the identification of a trust company as a banking institution being left to later years. In fact, it was not until 1874 that all New York trust companies became subject to the supervision of the state banking department.

Development.—For some years following the organization of these older trust companies, few opportunities were afforded them to be of service to corporations. At first, comparatively little business was carried on in the corporate form. However, corporations increased in size and number as the advantages of limited liability and more stable form of organization became recognized. The period was one of expansion which created unprecedented demands for capital. The increased use of machinery and improvements in transportation methods furthered this expansion. Soon, the great period of railroad building gave new impetus to the development of corporations. Taking into consideration the stage of our national development, these early railroads raised considerable amounts of capital. For example, in 1844, 17 years after its organization, the Baltimore & Ohio Railroad Company had outstanding $7,000,000 in capital stock and $985,000 in bonds.[2] The New York & Erie Railroad Company reported, in 1852, $6,000,000 in capital stock and $14,000,000 in bonded indebtedness.[3]

As the security issues of railroads and other corporations increased in size, the need for the service of trust companies in their fiduciary capacities was emphasized. Shortly after the close of the Civil War it became the general practice to appoint trust companies rather than individuals as trustees under corporate mortgages. In 1869 the New York Stock Exchange ruled that all listed stocks must be registered by an independent registrar acceptable to the Exchange, and trust companies generally were named as registrars of stocks. This requirement illustrates the trend toward establishing

---

[2] Stuart Daggett, "Railroad Reorganization," page 1. (The proportion of stock to bonds is interesting.)

[3] Stuart Daggett, "Railroad Reorganization," page 34.

safeguards to protect investors from irregular issues of securities, which is a primary function of the corporate trust and corporate agency departments of present-day trust companies.

Of recent years corporations have become a dominant factor in business. The extensive field for corporate trust and agency services is indicated by the amount of the securities in the hands of the investing public. It has been conservatively estimated that over $115,000,000,000[4] of securities are held by the American people. The fiduciary departments of trust companies and other financial institutions, in the capacity of trustee or agent, render service of one kind or another in connection with a large part of the securities held by the public.

"Trust company" as used herein.—It might be well to mention at this point that it is not intended that the reader should apply our references to trust companies merely to those institutions which incorporate "trust company" as part of their title. On the contrary, all companies engaged in the administration of trusts and corporate agencies are meant to be included, and, within this scope, of course, are state banks so engaged and such national banks as have qualified pursuant to the Federal Reserve Act.

Federal Reserve Act (with respect to fiduciary powers).—The extension of trust powers to national banks is one of the changes brought about by the Federal Reserve Act of 1913. The wording in the original act was inadequate and somewhat obscure and, after a decision by the Supreme Court of the United States, Congress enacted an amendment (approved September 26, 1918) which empowered the Federal Reserve Board to grant fiduciary powers to national banks upon proper

---

[4] Moody, "Manual of Investments" (1926 ed.), p. li, gives the following approximation of securities in the hands of the American people in 1925:

Corporation Bonds and Notes (at par value)	$37,027,816,000
Corporation Stocks (at *market* value)	35,237,847,400
	$72,265,663,400

This is exclusive of government and municipal obligations and other so-called public securities which, according to Moody, total another $43,000,000,000, making a grand total of over $115,000,000,000. It will be noted that corporation stocks have been figured at their approximate *market* value. If the par value had been used, the total would have been considerably higher.

application of the latter. According to the amendment the Board may give national banks "when not in contravention of state or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which state banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the state in which the national bank is located."

Supreme Court decision.—As late as 1924, however, the Supreme Court of the United States was called upon to decide whether national banks might act as executors of estates in states whose laws permitted trust companies so to act.[5] In rendering its decision the court emphasized the paragraph of the amendment reading, "Whenever the laws of such state authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies, or other corporations which compete with national banks, the granting to, and the exercise of, such powers by national banks shall not be deemed to be in contravention of state or local law within the meaning of this Act."[6] However, prior to this decision, the fiduciary activities of national banks had become firmly established in many states.

Organization.—On page 5 appears a chart of the organization of a large trust company. This is given for the purpose of visualizing the relation of the fiduciary departments to the organization of the institution as a whole.

From the chart it will be noted that the fiduciary group of departments is one of six major groups comprising the entire organization. Because the subject is foreign to this book, no effort has been made to subdivide the remaining five major groups, but it should be understood that each group may be composed of several related departments. Their functions may be briefly summarized as follows:

Banking.—This group includes loan, tellers, bookkeeping, credit, and development (new business) departments.

---

[5] Burnes National Bank v. Duncan, 265 U. S. 17.

[6] These quotations are from Section 11(k) of the Act as amended. This section also sets forth the conditions under which national banks may be granted trust powers.

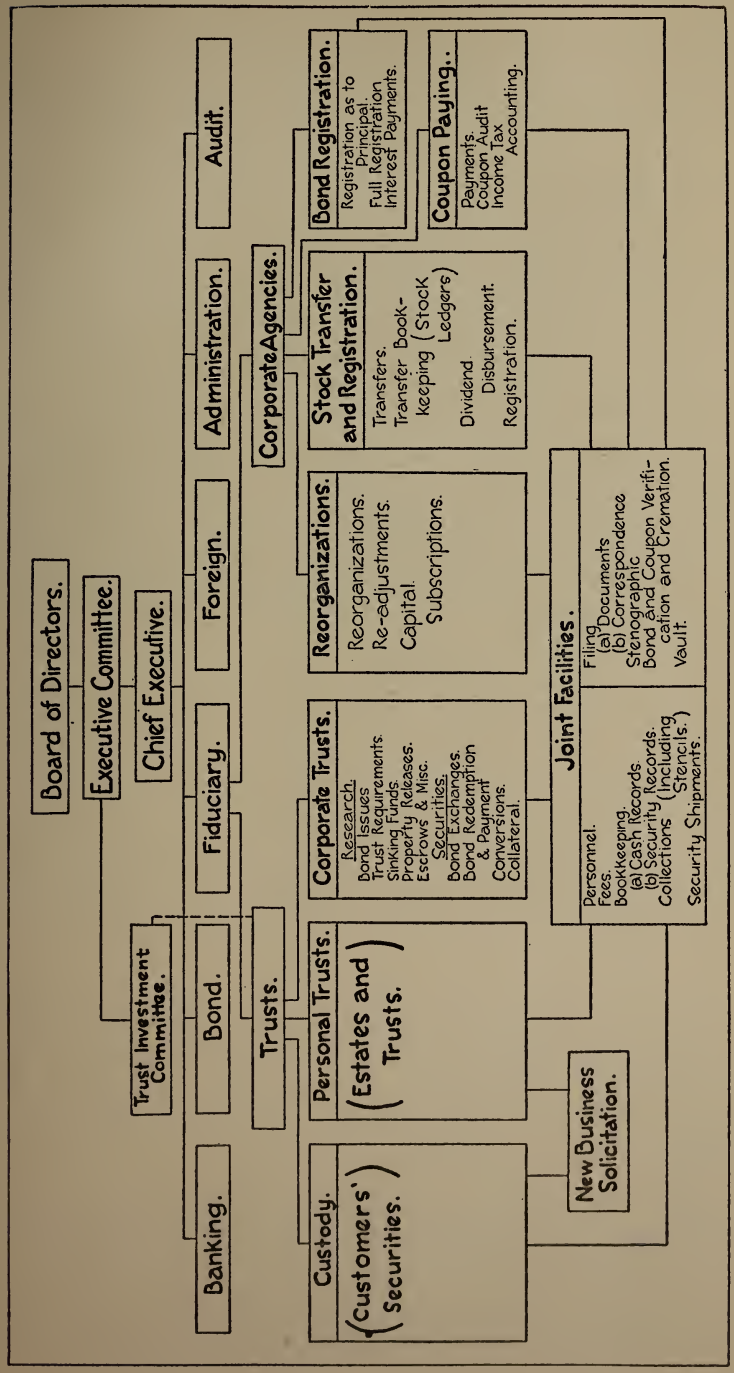


Fig. 1.—Organization Chart.

Bond.—In many institutions the activities of a bond department are carried on by a separate corporation usually known as a "security company," owned by the institution itself or by its stockholders. The activities of this group, whether operated as a department of the main organization or as a separate corporation, relate to the purchase and sale of securities. Its inventory or stock in trade is acquired through underwriting operations, originated by it or in which it participates with other underwriting houses. As in any other successful merchandising effort, it must sell the goods which it purchases and, for this purpose, maintains a selling force. In addition to selling its own wares, such a department is usually equipped to render the service of a brokerage office in the purchase or sale of any security for the account of customers, and, further, to render to customers general investment advice. As a natural consequence of the latter service, the statistical department is usually grouped with the bond department. In many cases the bond department will control and manage the security investments of the institution of which it is a part.

Foreign.—While, as would be implied from the name, this department deals in the currencies of foreign countries, its functions are much broader. In reality a foreign department is an extension to international affairs of the functions of the banking department and its broadest and most important services are rendered in the field of international commerce. Many of the larger financial institutions, particularly those of New York City, now maintain branches in one or more foreign countries.

Administration.—Under this heading come the departments which control the activities of the organization pertaining to personnel, coördination between departments, the supervision of the various service groups, and the management of the banking offices and owned or leased real estate or buildings.

Audit.—The audit department is independent of all other departments of the bank and ordinarily reports directly to the chief executive of the organization. As its name implies, its purpose is to maintain a continuing check on the accuracy of the records of the institution. In some of the larger institu-

tions this department is now headed by a comptroller who, in addition to his supervision of the functions of the auditing department, is charged with the control, from the standpoint of efficiency, of the organization as a whole and its records, and with supervision of the expense account.

Management and control of banking institutons.—It is the usual practice of large banking institutions to head each of the major groups discussed above with a senior officer (usually a vice president) who is responsible directly to the president or the chief executive officer. The chief executive in turn reports to the board of directors or executive committee of the board. Ordinarily, the board of directors meets but once or twice a month and the by-laws of the institution will provide that in the interim between the meetings of the board of directors the management of the institution's affairs shall rest with an executive committee selected from the board, which will have more frequent meetings, say, once or twice a week. While not indicated on the chart, the control of a banking institution, as in the case of other corporations, rests with the stockholders through their periodical election of the directors in accordance with the charter and by-laws of the company.

Fiduciary group.—The chart indicates the two principal divisions of the fiduciary group, namely, trusts and corporate agencies. Trusts, in turn, are separated into three departments—custody, personal trust, and corporate trust. Corporate agencies are divided into two major departments—(a) reorganization, and (b) stock transfer and registration, and two smaller divisions, bond registration, and coupon paying.

Custody.—This department has the custody of securities deposited by, or for the account of, customers and subject to their order. The department, in addition to the custody of the securities, will attend to the collection of income therefrom and the delivery or receipt of securities on order of the customer. It is the general practice of companies handling this type of business not to accept any responsibility for the supervision of the securities from an investment viewpoint.

Personal trust.—This department administers estates, and testamentary and living (voluntary) trusts, guardianships,

etc. The trust investment division, as explained in the following paragraph on trust investment committee, supervises the investment of the funds of the various trusts in the department. Ordinarily a separate division takes charge of the management and sale of real estate and makes investments represented by bond and mortgage on real estate. The trust administration division is also subdivided into a group in charge of the administration of estates and a second group administering trusts.

Trust investment committee.—In many trust companies doing a substantial personal trust business it has been found impracticable for the trust officer or officers alone to supervise trust investments. This has led in some cases to the appointment of a trust investment committee whose membership ordinarily is composed of one or more directors of the company, one or more officers of the trust department, and perhaps one senior officer from each of the banking and bond groups. The committee will meet periodically and pass on all questions of trust investments which are submitted by the trust department. It will keep a record of its proceedings, and its recommendations are submitted to the executive committee for confirmation. In companies which have organized a trust investment committee the officers in charge of the trust department are required to submit to the committee for approval any proposed investment or reinvestment relating to trust funds. Further, the trust department is required, usually in coöperation with the statistical department, to maintain a continuing review of all trust investments, submitting the results of such review to the trust investment committee for recommendation. While practically all matters submitted to the trust investment committee will come from the personal trust department, the corporate trust department occasionally will have investments which need to be considered by the committee.

New business solicitation.—The personal trust department frequently takes charge of its own new business solicitation and has a division organized for this purpose. The solicitation of new trust business requires special training, a thorough knowledge of the theory, and at least a general knowledge of the technique, of trust administration. This division, while

under the control of the personal trust officers and reporting directly to them, ordinarily will coöperate closely with the development or new business department of the bank as a whole. The trust solicitors often will develop "leads" for banking and custody accounts. Counterwise, the field men of the development department will uncover trust "leads." For this reason, there should be close coöperation between the two groups.

Corporate trust.—The corporate trust department of a trust company has, as its principal purpose, the administration of those functions which are imposed upon such an institution, as trustee, by mortgages or indentures providing for the issue of bonds or other corporate obligations. Corporate mortgages, as we now know them, are a logical outgrowth of the development of corporations. So long as the funds needed by corporations could be supplied by one or a few lenders, mortgages to a trustee were unnecessary. As corporate borrowings increased in amount, it became essential to set up machinery by which numerous lenders could participate in loans to corporations and receive acceptable evidence of the corporations' indebtedness. The use of a trustee offered a satisfactory solution. To secure its indebtedness a corporation, by means of a mortgage, conveys all or a part of its property to the trustee, but in trust for the benefit of the holders of the bonds which the corporation issues thereunder and which the trustee, for purposes of identification, authenticates. Numerous other duties are imposed upon the trustees under corporate mortgages but these are mostly of an administrative nature unless the corporation defaults in its obligations under the mortgage.

The department may include in its scope certain closely related agency services, such as the payment of bonds and the registration of interim receipts. Circumstances may also render it advantageous to charge the same department with the care of miscellaneous trust and agency accounts which have no relation to mortgage trusteeship.[7]

Corporate agency group.— Corporate agencies as distinguished from corporate trusts comprehend, mainly, those fidu-

[7] For examples see Chapter XIII.

ciary services rendered to corporations where the relationship of the trust company is that of agent rather than of trustee.

Reorganization.—This department's activities embrace services as agent for protective, reorganization or readjustment committees, or for corporations, in connection with the rearrangement (voluntary or involuntary) of the financial structure of corporations. The purpose of committees of this nature is to provide a means for concerted action by security holders. The appointment of trust companies as depositary for such committees became general during the great railroad reorganizations which followed the financial panic of 1893, although appointments of like nature had been made in previous years.

Stock transfer.—Under this heading come the activities of the trust company as agent of corporations in issuing and recording changes in ownership of their capital stock. The trust company in this capacity is merely an agent to perform duties which in earlier days were assumed by the corporations themselves. Due to the highly technical and specialized work involved, corporations in increasing numbers have appointed transfer agents.

Stock registration.—As stock registrar, the trust company's duty is to check the issue of the stock of its principal, the issuing corporation, and to prevent any issue thereof (through negligence or fraud) in excess of the amounts authorized. The general use of trust companies as registrar to protect stockholders against unauthorized or overissues may be said to have been brought about by the manipulations of the stock of the Erie Railroad Company in the 1860's. The Erie "ring" of that day was able to produce an apparently unlimited supply of stock with which to flood the market whenever needed in its operations. As a result of this and the irregularities which appeared in the issuance of stock of other corporations the New York Stock Exchange finally ruled that all listed shares must be registered by an independent agency.

Bond registration.—As bond registrar, a trust company records the registration and transfer of bonds, both "full"

registration (principal and interest) and registration "as to principal only." Usually, but not necessarily, appointments as bond registrar are the direct outgrowth of mortgage trusteeships.

Coupon paying.—As the name implies, the trust company through its coupon-paying department, acts as the agent of corporations and others in the payment of interest obligations represented by coupons.

Joint facilities.—As to the joint facilities indicated on the chart, it should be mentioned that each department of the trust and agency group may maintain its own accounting, collection, shipment, filing, and stenographic divisions, and, in some institutions, this is done. On the other hand, it is generally conceded to be more economical to operate these facilities under centralized control for the benefit of all of the departments of the group.

General.—In the chapters that follow the purpose has been to discuss the fiduciary services usually rendered for corporations by a typical trust company. In certain states local laws or practice may result in a trust department assuming other duties. Mention might be made of Michigan, where the statutes restrict the conduct of banking business by trust companies, which, however, quite generally act as receivers and liquidators of corporations; also of certain of the states where trust companies do a large business in mortgage loans.

Chapter II

CORPORATE TRUST SERVICES; TRUSTS BASED ON THE CORPORATE MORTGAGE

Definition of mortgage.—When a borrowing corporation conveys real property to a trustee, in trust for holders of the obligations to be issued, the instrument usually is called a "mortgage" or "deed of trust." "The word 'mortgage,' " writes Mr. Roberts Walker,[1] "is from the French: *'mort'* and *'gage,'* 'dead' and 'pledge.' A pledge . . . is the transfer of property by Hodge to Sadler, to secure to Sadler the payment of money loaned by him to Hodge or to secure the performance of some other promise made by Hodge. In its origin, a pledge involved transfer of possession. A pledge may, however, be made without surrendering possession," and, generally speaking, this is true of the modern corporate mortgage, regarding which Mr. Walker continues: "The name 'mortgage' . . . is a rank understatement. The modern form of document not only has the effect of a mortgage, but is also a collection of agreements, covenants, and 'don'ts,' whereof many have no logical relation to the familiar process of mortgaging . . . "

In many instances, however, the company does not mortgage its property to secure the payment of its bonds. It may pledge securities, claims, receivables, chattels, or other personal property as collateral, or it may simply agree to observe certain conditions. The instrument under which the bonds are issued is then given the title, "trust indenture," "trust agreement," or some similar designation. Its purpose is the same in all cases, that is, to evidence the contract between borrower and lender and to afford the security or assurances required by the lenders in addition to the company's promise to pay.

Types of mortgages.—As any corporate mortgage or similar instrument exists solely to protect the obligations issuable

[1] "The Modern Corporate Mortgage" (a lecture delivered at Princeton University, March 2, 1917).

thereunder, it seems appropriate to draw attention first to some of the more important types of corporate obligations. The title of a bond usually gives some indication of the security for the issue, although unqualified reliance on the title would be unwarranted. Investors are learning to judge bonds on their merits; they are more interested in equities than in bond titles, and are coming to realize the necessity for an examination of the exact position of each issue.

While no reputable corporation would countenance a misleading description of its bonds or mortgages, it is customary to select the most attractive designation consistent with the status of the issue. Suppose a corporation wishes to issue bonds under a new mortgage which will be a third lien on its property. It might term the new mortgage a "general mortgage," or a "refunding mortgage," or label its bonds with some title descriptive of one or more of the outstanding features of the issue; but it would not be likely to apply the title "third mortgage."

Detailed consideration of the various types of bonds and their purposes belongs in the study of investments[2] and corporate finance, but a brief outline is given below of the types of mortgages and bonds which are met with more frequently in trust department work. The descriptions which follow relate to the characteristics of the various mortgages at the time of execution. It should be borne in mind that a mortgage with a title implying a junior lien position ofttimes, through the retirement of prior lien obligations, becomes a senior lien. For example:

Assume that in 1925 a corporation executed a general mortgage and issued bonds thereunder maturing in 1950; prior mortgages at that time consisting of a first mortgage securing bonds maturing in 1935; and a first and refunding mortgage securing bonds maturing in 1940, so that the general mortgage really constituted a third mortgage of the corporation. When the first mortgage bonds are paid in 1935 the general mortgage bonds will move up to second rank,

---

[2] A comprehensive classification of bonds appears in Lawrence Chamberlain's "Principles of Bond Investment"; also in W. E. Lagerquist's "Investment Analysis," Catalogue Description of the More Important Bonds, pp. 675-697.

and in 1940, upon payment of the first and refunding bonds, the general mortgage bonds will move into first place.[3]

Some of the characteristics which, at the time of execution, may apply to mortgages of the types indicated, are briefly mentioned below.

First mortgage.—This is the most common and simple form of corporate mortgage, constituting a first lien on the property pledged. In some cases, a first mortgage covers all property of the debtor corporation, and, in other cases, only specified property. Sometimes, when the mortgage covers all property of the corporation, it also provides that its lien shall attach to any property of the corporation thereafter acquired. Such a provision, usually referred to as an "after-acquired property clause," is found in various types of mortgages, and is not necessarily restricted to first mortgages.[4]

Second mortgage.—In past years it was usual to have second, third, and even fourth mortgages on property of the same corporation, particularly railroads, the title of the mortgage indicating the relative rank of the lien which it created. To-day trust companies are sometimes requested to act under indentures, the titles of which embrace the words "second mortgage," but seldom under those with titles containing words indicating a lien junior to a second mortgage. This is to a considerable extent due to the current practice of giving to bonds complicated titles which, while technically correct, sometimes fail to emphasize the distance of the lien which they create from the property covered by the mortgage.

First and refunding mortgage.[5]—Such a mortgage is a first lien on a part of the property pledged (sometimes a very small part), and a lien on other parts of the property subject to prior liens. Its lien position on the remainder of the property

---

[3] This illustration relies wholly on precedence in *time*. The mortgage might permit a prior lien to be created.

[4] For a further discussion of the "after-acquired property clause," see C. W. Gerstenberg, "Financial Organization and Management of Business," Chapters XII and XIII.

[5] According to the White & Kemble Atlas and Digest of Railroad Mortgages (supplement issued in 1924), the Great Northern Railway Company mortgage, dated May 1, 1911, securing an issue of first and refunding mortgage bonds is a first direct mortgage on 2108.92 miles; a first collateral lien on 543.33 miles; a second direct mortgage on 4112.82 miles; a third direct mortgage on 663.09 miles.

is improved as the prior liens are paid off, through the refunding operations provided for in the mortgage, that is, the retirement, at maturity, or otherwise, of prior obligations, through the issuance of first and refunding mortgage bonds.

Refunding mortgage.—This title is inadequate, as it does not indicate in any way the rank of the lien, except by the inference that in due time prior liens will be removed through refunding operations under the refunding mortgage.

General mortgage.[6]—This term, while indefinite, indicates, in most cases, a general lien on all or most of the property subject to several existing liens.

First and collateral mortgage.—This title indicates a first mortgage on a part of the property of the company and an interest in other property through pledge with the trustee of stocks or bonds, frequently those of subsidiary or controlled companies.

Prior lien mortgage.—This title indicates a lien prior to other obligations of the debtor, and, usually, although not necessarily, a prior lien mortgage secures the prime issue of the company.

Purchase-money mortgage.[7]—As the term implies, such a mortgage is given in part payment of the purchase price of property. It usually constitutes a first lien on the property purchased, but not necessarily on all, or any other, property of the mortgagor.

Leasehold mortgage.—Such an instrument constitutes a lien on a leasehold interest in real estate, but not on the real property itself. Because title to most permanent improvements on real estate passes with title to the real estate on which such improvements are located, and because default of the lessee under the terms of the lease creating the leasehold may destroy the debtor's title to the actual value behind such a mortgage, many trustees have had unsatisfactory expe-

---

[6] White & Kemble report that the Great Northern Railway Company general mortgage, dated January 1, 1921, is a first direct mortgage on 238.11 miles; a second direct mortgage on 2,108.92 miles; a second collateral lien subject to the first and refunding mortgage on 543.33 miles; a third direct mortgage on 4,112.82 miles; and a fourth direct mortgage on 663.09 miles.

[7] C. W. Gerstenberg, in "Financial Organization and Management of Business," p. 207, gives an interesting chart to illustrate the process of acquiring property by use of a purchase-money mortgage.

riences with this type of mortgage, although there are outstanding exceptions.

Income mortgage.—A mortgage of this kind provides for an issue of bonds on which the interest is payable only if earned by the debtor. Such a mortgage usually contains a formula for the determination of net earnings. The title of the mortgage seldom indicates the lien position, which is usually well down the scale of the mortgagor company's indebtedness. Interest may be "cumulative" and, if unpaid, continues as a charge against the company secured by the lien of the mortgage.

There are many other titles such as "improvement," "extension," "unified," or "adjustment" mortgage, each title giving an indication of the purpose of the bond issue thereunder; but unless such titles are further amplified they give no indication of lien position. There are also numerous variations and combinations of these titles, such as "first lien and general mortgage," "refunding and improvement mortgage," "consolidated and refunding mortgage," and so forth. These titles convey, to some extent at least, the purpose and nature of the issue.

Indentures, other than mortgages.—Many issues of corporate securities are secured by lien on, or by the pledge of, personalty; that is, property other than real estate. Two typical examples of issues of this character follow.

Collateral trust bonds[8] which are secured by the pledge with the trustee, pursuant to the terms of the indenture providing for the issue, of specified collateral, usually securities.

Equipment obligations,[9] usually issued by railroads, but sometimes by steamship or industrial companies, and secured by the equipment, such as locomotives and cars, specified in the indenture under which they are issued.

Unsecured obligations. — Some corporations are strong enough financially to borrow without giving a lien or pledging securities. Such issues are, however, made under trust agreements and are classed as "unsecured." They are gen-

[8] See Chapter XII.

[9] See Chapter XII.

erally given the title of "note," "debenture,"[10] or "certificate of indebtedness."

Income and adjustment bonds are sometimes unsecured, and, conversely, notes and debentures occasionally are given mortgage or collateral security, or they may contain a covenant that no subsequent mortgage will be made unless the notes or debentures are secured equally with the subsequent issue.

Further variation in titles.—Each of the titles just discussed, when applied to the bonds issued under the mortgage or indenture, usually is combined with other terms indicating special features of the issue. Some examples of these terms are:

Sinking fund—indicating that the indenture provides for a fund to be paid periodically to amortize the debt in whole or in part.

Serial—indicating maturity in periodical installments. This should not be confused with the word "series." Many of the modern mortgages authorize the issue of bonds in series, the terms of each series, such as interest rate, sinking fund, maturity, and so forth, to be determined by the corporation at the time each series is authorized. The different series of bonds under a given mortgage are usually distinguished by a designating letter, such as A, B, C, and so forth. "Serial" issues, however, while they may have a distinguishing letter, are usually issued to the entire authorized amount at the time of, or shortly following, the execution of the trust indenture. The payment of each installment as it matures, say, annually or semi-annually, serves as a "sinking fund." Equipment obligations are the best example of serial issues.

Convertible—indicating that the issue gives to the holders thereof, on terms stated in the indenture, the option of converting the bond into another security, usually the common stock of the debtor company.

---

[10] Francis Lynde Stetson, in "Some Legal Phases of Corporate Financing, Reorganization, and Regulation," p. 6, makes this statement: "In England, according to Palmer [Sir Francis Palmer], the term 'debenture' seems to comprehend all serial obligations of the corporation, whether or not secured by a charge, and whether or not issued under a trust deed, those issued under a trust deed being generally styled debenture stock. In this country, the term 'debentures' has come to mean any class of serial obligations of a corporation *not* secured by a specific lien upon property."

Participating—indicating that the issue is entitled, on stated terms, to receive, in addition to the specified interest, some share in the profits of the debtor company.

Guaranteed—indicating that the issue bears the guaranty of some party other than the borrowing company.

Joint—meaning a security issued by two or more companies.

Gold—meaning that the bonds are payable in gold coin of a specified standard of weight and fineness.

Sterling, franc, etc.—indicating the currency in which the issue is payable.

For example, an issue entitled, "First and Refunding Mortgage Convertible Sinking Fund 5% Gold Bonds, Series C," would, by its title, imply: (1) that the bonds are secured by a mortgage which is a first lien on some property and which provides for the refunding of certain prior liens, and through the refunding operations an improvement of the original lien position; (2) that the bonds are convertible at the holder's option, but on terms set forth fully in the mortgage and briefly in the bonds themselves, into some other issue, usually stock of the debtor company; (3) that the bonds are subject to a sinking fund, the terms of which are fully set forth in the mortgage, and briefly summarized in the bonds, providing for the amortization or partial amortization prior to maturity of the debt represented by the bonds; (4) that the bonds of this series bear interest at the rate of 5 per cent annually; (5) that the principal and interest of the debt represented by the bonds is payable in gold; and (6) that the bonds under this mortgage are issued in series of different terms, Series C being presumably the third series.

Mortgage, etc., as used herein.—The use of the word "mortgage" technically should imply that the instrument is a lien on property. However, as most of what follows in respect of corporate mortgages applies with equal force to agreements providing for the issue of other kinds of corporate obligations, it will serve our purpose to understand that, except where the context clearly indicates a limited use, subsequent references to mortgages include other similar types of agreements, and likewise references to bonds and bondholders are

to be understood as embracing, respectively, bonds, notes, debentures, or other principal obligations and the holders of such obligations.

In principle a corporate mortgage is essentially the same as the simple mortgage of an individual on his home. In fact, corporations may, and frequently do, borrow money on the security of the familiar real estate bond and mortgage, provided the amount required is not too large to be advanced from one source. But the present-day corporate mortgage provides a means by which a loan may be divided among a great many lenders through the issuance to participants in the loan of numerous separate bonds, all secured by a single mortgage to a trustee.

Individual trustees for corporate mortgages.—The earlier mortgages were made to an individual trustee (or perhaps to two individual trustees); but it soon became evident that this practice was unsatisfactory, as many times the individuals so named were not available when their services were needed, and they might die during the term of their trusteeship. Consequently, in recent years, it has been the almost invariable custom to appoint a bank or trust company as trustee. An individual co-trustee sometimes is joined with the corporate trustee, because of statutory requirements;[11] but, except upon default, his duties are merely nominal, the corporate trustee being charged with the active duties. It is customary, where no reason exists for making a distinction, to refer to the corporate trustee as "the trustee."

Qualifications of trustees.—Corporate fiduciaries are nowadays appointed as mortgage trustees to the practical exclusion of individual trustees, due not alone to the permanence of their corporate form, nor even to the qualities of strength and stability which we are accustomed to associate with financial institutions, for of equal or greater importance are the advantages which result from the appointment of an adequately equipped trustee whose experience enables it fully to understand the responsibilities, and properly to perform the duties involved in the trust relationship. To these desirable qualities, namely, permanence, strength, stability, experience, and facilities, let us add one more—impartiality.

---

[11] See page 23.

Trustee's duties.—The paramount duty of the trustee is to protect the rights of the bondholders, and its actions under a mortgage should always be considered from the viewpoint of the bondholders' interests. It is only natural that the trustee should also wish to administer a trust to the satisfaction of the mortgagor. Until default the trustee has a contract with the mortgagor and should live at peace with it. However, in the event of a conflict between the mortgagor's and the bondholders' interests, the trustee must respect its duty to the bondholders. Every carefully drafted mortgage will clearly define the duties and responsibilities of the trustee which, in later chapters, will be considered in detail. But it seems appropriate to point out at this time that, under a typical corporate mortgage, the responsibilities which the trustee accepts are definitely limited. Its position is well stated by Mr. William Lilly:[12] "Assume that the mortgage is made to a trust company. Though in form the trust company is the mortgagee, it appears that it is mortgagee, not to secure a loan it has made but to secure the loans made by a multiplicity of people who receive the bonds of the corporation as evidences of their rights as creditors of the corporation. The trust company is mortgagee for the benefit of the bondholders. The position it occupies in the transaction is called that of 'trustee.' It is not to be assumed, however, that its position exactly corresponds with that of the trustee of an estate left by a will who is charged with the duties of managing the estate. The trustee under a corporation mortgage, as will be seen, does not accept a responsibility of this kind. In essence, unless and until the corporation defaults in its obligations to the bondholders, the trustee has no active part to perform excepting purely formal administrative duties."

The scope of the trustee's duties varies with the mortgage, consequently, the trustee must examine closely into the mortgage provisions in each case. In our discussion herein we shall consider a typical mortgage; other instruments might impose greater or less responsibility on the trustee. The trustee does not seek to avoid responsibility which it might properly accept, but to have the mortgage clearly set forth its duties and responsibilities so far as it is possible to do so. Of course, the provisions in the mortgage relative to the

[12] William Lilly, "Individual and Corporation Mortgages," p. 78.

trustee should be considered in the light of the many legal decisions on the subject. It might well be said that trustees generally would be willing to accept a much greater degree of responsibility than at present, if adequately compensated for the risks involved. It is probable that the trustees' services will be gradually broadened as the value of more extensive service is recognized.

Chapter III

ACCEPTANCE OF CORPORATE TRUSTS

Securing business; preliminary negotiations.—How and where is corporate trust business secured? What are the necessary steps in establishing such a relationship? These questions naturally arise at the very outset of our study of this subject.

Corporate trusts, from the standpoint of solicitation, are a most difficult subject. Appointments as trustee are received from two main sources: (1) the borrowing corporation, and (2) the bankers who underwrite or sell the issue; and, strange as it may seem to those who are not familiar with this field, it is the bankers who, in the majority of cases, control the appointment. Few corporations desiring to borrow on a large scale through the medium of a bond issue will undertake, themselves, to sell the bonds to the public. The business of selling securities is highly specialized, and one or more of the bond-selling houses is usually requested to consult with the officials of the corporation, in determining the details and terms of the proposed issue. The entire issue is then sold by the corporation to a bond house or underwriting group at a price fixed by mutual agreement, or at times the sale is made after competitive bidding by as many of such houses as may submit an offer.[1] The successful bidder and associates, if any, then offer the bonds to the public at a price intended to net a profit to the underwriters commensurate with the risk and service involved. The practice has grown among the banking houses of inserting in the underwriting contract a provision that the trustee shall be nominated by the bankers. There are two reasons for this practice: (1) the bankers are interested in selecting as trustee an experienced and efficient guardian of the rights of the bondholders; and (2) the appointment, in the eyes of banking institutions with fiduciary powers, is desirable business which the bankers like to place with their own friends among the banks and trust companies.

[1] D. F. Jordan, in "Investments," Chapter XVII, discusses the work of syndicates and bond-selling houses.

Investigation of proposed trusteeships.—Unless the proposed mortgagor is already a client in good standing, any offer of corporate trust business should be carefully investigated. The trust company should satisfy itself as to the character and ability of the corporation's management and the reasonable expectancy of success in its operations. In some cases it may be desirable to obtain credit reports and to request the corporation to submit financial statements. The trust company also should be assured as to the standing of the bankers who are to underwrite the issue.

Qualification in states.—One of the first questions in considering the offer of a trusteeship under a mortgage on real property is whether the trustee is qualified to act under the laws of the state or states in which the property is located. This problem, while purely legal, requires constant vigilance, because of the wide variation and constant change in state laws. It would be most embarrassing to the trustee, as well as expensive, and perhaps seriously detrimental to the bondholders if, when occasion arose to proceed under the provisions of a mortgage, it developed that the trustee could not act, because it was not qualified under the laws of the state in which the mortgage must be enforced.

Individual and corporate co-trusteeships.— Those states which have legislated against "foreign" corporate trustees (corporations organized under the laws of other states), by prohibiting them from enforcing trusts in the state courts or otherwise restricting their activities, cannot similarly restrict the individual citizens of other states.[2] Consequently, one

[2] The United States Constitution, in Section 2 of Article IV, provides, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This is the basis for the constitutional point that no state can prohibit a natural person, citizen of the United States, from acting as trustee within its borders. Some state statutes relating to trusteeship make the distinction between *natural persons* and *corporations* of the several states.

When the United States Constitution was adopted, business was scarcely done at all in the corporate form, and the question of corporations holding trusteeships in foreign states certainly was not in mind. Corporations have grown up under special statutes of the several states and, in this connection, are not at all to be compared with natural persons. It has never been held to be unconstitutional for a state to restrict the business that a foreign corporation may do therein, or to prescribe the conditions upon which it may exercise its powers. In other words, the states may admit "foreign" corporations on the states' own terms.

or more individuals often are joined as co-trustees with the corporate trustee. The situation is sometimes met by appointing, as co-trustee, a trust company or bank situated in the state in which the mortgaged property is located. Generally speaking, an individual or corporate co-trustee has no active duties to perform unless and until proceedings are undertaken to enforce the mortgage. Even in this event, while the proceedings may necessarily be had in the name of the co-trustee, this situation is almost without exception directed by the corporate trustee and its counsel. Frequently a mortgage delegates to the corporate trustee the power to name a successor to the individual trustee in case of the death or resignation of the individual originally designated, or permits the appointment of a co-trustee in case of need.

Restrictive state statutes.—Two or three illustrations of the attitude of several states toward the exercise of fiduciary powers by foreign trustees may not be out of place:

Some years ago Indiana passed a statute requiring that intra-state trusteeships must be exercised by citizens of Indiana. The statute has been held unconstitutional, so far as natural persons residents of other states are concerned; but prior to the decision on the constitutional point it was the basis for joining a resident of Indiana as co-trustee under mortgages on property in that state.

In Missouri the restrictive statute has taken a somewhat different tack, and prohibits foreign corporations from *enforcing* trusts of real estate *in the courts* of Missouri, unless joined by a resident trustee. The prohibition is not recognized by the Federal courts, but it has not been held unconstitutional.

California statutes along this line started in 1913 with an attempt to deny to foreign corporate trustees the right to certify bonds secured by property in California. The validity of this statute was immediately questioned, so far as it concerned acts to be performed outside of California. However, during the time when the law remained in effect it resulted merely in the appointment as trustee of individuals, officers of trust companies which, but for the law, would have been selected in their corporate capacity. Subsequent modifications of the California statutes have resulted in a situation wherein

individuals or California trust companies are joined as co-trustee.

At the risk of repetition, emphasis is laid on the necessity for legal advice on all questions involving the qualifications of a corporation to accept, with or without a co-trustee, trusts covering property in foreign states.

Conflicting liens.—As corporations have expanded, the complexity of their financial structure has increased, and it is now quite usual for a number of different liens to exist on the property of one corporation. In the earlier days of corporate trusteeships the situation was comparatively simple, as in most instances the mortgages ranked in relative order first, second, and so forth. To-day, however, a refunding mortgage, for instance, may be a first lien on some of the property, a second lien on another part, a third lien on still another part, and so on almost without limit.[3] There is no legal bar to a trustee accepting two or more mortgages with different lien positions on the same property, and it is often done.[4] However, the possibilities of future embarrassment and expense should always be frankly considered before accepting the appointment under a mortgage constituting a lien in conflict with the lien of an existing trust to the same trustee. So long as no occasion arises to enforce the provisions of either mortgage, there will be no difficulty and probably no objection; but promptly upon the commencement of court proceedings under either mortgage the discerning trustee will resign under all but one lien on the same property. There are a number of court decisions severely criticizing trustees which have attempted to enforce a mortgage lien while at the same time acting under one or more conflicting liens.

Examination of form of mortgage.—Promptly, upon consummation of the underwriting contract covering a proposed bond issue and the selection of a trustee, it becomes necessary to draft the mortgage and the form of bond to be secured. Three parties are interested—the borrowing corporation, the

---

[3] See example in footnote 6, p. 15.

[4] However, the regulations of the New York Stock Exchange provide that "each mortgage, indenture or deed of trust should be represented by a separate trustee," and as regards listed issues, the Stock Exchange holds to this position, except on application stating circumstances satisfactory to it, as the basis for a special ruling to the contrary.

bankers who have underwritten and who will sell the issue, and the trustee. The borrowing corporation having agreed with the underwriters as to the essential features of the issue, the business of preparing the mortgage is left in the hands of the lawyers. Counsel either for the bankers or for the debtor may set up the first draft of the mortgage, which is then subjected to a series of negotiations between the interested parties. One draft of the mortgage will be submitted to the trustee and examined in detail by its counsel. Good practice demands that an officer of the trustee also should examine the proposed mortgage from a strictly practical viewpoint, and particularly with the thought of suggesting changes which might tend to facilitate the administration of the trust. Careful examination by an experienced trust officer of a proposed mortgage often results in correcting inaccuracies, clarifying doubtful expressions, eliminating unwieldy provisions, and materially improving the mortgage at one point or another.

It is important that these weak points be located and strengthened before the mortgage is executed. While in some of the recent mortgages it is provided that material changes in the provisions of the mortgage (not including, however, such matters as terms of payment and interest rates) may be made on the written approval of the holders of a specified percentage, say 80 per cent or 90 per cent of the outstanding bonds, a most important point in considering all other mortgages is that, once the indenture is executed and the bonds issued and distributed, no change adversely affecting the interest of the bondholders can be made without their unanimous consent, which is difficult and frequently impossible to obtain.

All too often it is discovered after the bonds are distributed that some part of the mortgage is impracticable or is working an unnecessary hardship on the borrowing corporation. Unless the mortgage contains special authority, it is then too late to make a change without the delay and expense of obtaining unanimous consent from the bondholders, if that be possible. As a result of this difficulty the company, and sometimes its bankers, often request the trustee to consent to what appear to be necessary and advisable changes without the bondholders' consent. The trustee cannot give such consent without taking upon itself some risk, for, no matter how evi-

dent it may be at the time that the proposed change is for the benefit of the bondholders as well as the mortgagor company, any bondholder who may later prove that he has sustained a loss through the act may hold the trustee to a strict accountability. While the monetary risk is important, the risk of censure for a breach of trust is an even greater consideration.

Execution of mortgage.—When approved as to form by all interested parties, the mortgage is executed by the debtor company and the trustee, in as many original counterparts as may be necessary (usually one counterpart for the company, one for the trustee, and one for each jurisdiction in which it is to be recorded). The number of counterparts to be executed is not a matter of great importance and is left to the discretion of the company, but each copy should be carefully examined to see that it agrees with the others in every detail. Having a separate counterpart for each place of record facilitates the recording and reduces the time required to complete the operation. Upon execution of the mortgage the trustee usually retains one original counterpart, delivering all others to the counsel for the company or the bankers, with the understanding that, upon completion of the proper recording, all recorded originals will be filed with the trustee. The one point insisted upon by all trustees is that at least one original counterpart must always be in their possession, as well as complete evidence of all recordings.

There is another point of importance to the trustee in respect of execution, that is, the mortgage frequently provides that execution by the trustee shall constitute a receipt by it for all securities or other property deliverable to the trustee at the time of execution, and, consequently, the trustee should see that full delivery is made to it of all such securities or property, if any, prior to delivery by it of any executed counterparts.

Supporting papers.—Prerequisite to, and as a part of, the execution of a mortgage, the trustee should assure itself that the execution by the mortgagor company is fully authorized. The following is a list of the documents by which such authorization is usually evidenced:

1. A copy of charter or articles of incorporation with all amendments. This document should be certified by the sec-

retary of state for the state under the laws of which the company is organized. It outlines the powers granted to the company by the state of incorporation and sometimes it also imposes conditions which must be fulfilled before certain powers are exercised.

2. A copy of by-laws with all amendments, certified by the secretary of the company under its corporate seal. This document contains the rules or regulations adopted by the company to control its own actions, through its directors and officers. Taken together items (1) and (2) should evidence to the trustee, first, that the company is duly organized and existing under the laws of a specified state; and, second, that, upon the corporate action proposed, it is authorized to borrow money and mortgage its property as contemplated.

3. Copies certified by the secretary of the company under its corporate seal, of the proceedings by the board of directors, and, in cases where the law of the state of incorporation so requires, the proceedings by the stockholders, authorizing the execution of the mortgage and bonds.

4. A copy, certified by the proper recording officers of the jurisdictions involved, of certificates of consent of stockholders, for those jurisdictions where the law requires the filing of such consent.

5. A certificate by the secretary of the company under its corporate seal of the election of the officers of the company, with a specimen of the signature of each officer.

Upon receipt of the papers listed in items (1) to (5) inclusive, in proper form and properly certified, the trustee will have in its possession evidence of the chain of authority passing from the state of incorporation, through the company's incorporators, stockholders, and directors to its officers, to execute the mortgage. Additional documents, as follows, are sometimes necessary:

6. A copy of order of approval of any public service commission or other public body having jurisdiction over the issue of securities by the company. Such copy should be certified by the secretary or clerk of the public body. The question of whether any such approval is required should be answered by the company and the answer accepted as satisfactory by counsel to the trustee.

7. Opinion of counsel to the company that the mortgage

gives the lien which it and the bonds issuable thereunder purport to create.

8. Opinion of counsel to the company as to the necessary recording of the mortgage, that is, the jurisdictions in which it should be recorded, and whether it need be filed as a chattel lien as well as a real estate lien.

While items (7) and (8) do not strictly have to do with the authorization of the mortgage, they are of importance to the trustee. It is no part of the duty of the trustee under a corporate mortgage to verify the lien, and practically all mortgages specifically relieve the trustee of this responsibility, which it cannot afford to assume, from the standpoint of cost and time. Nevertheless, the careful trustee desires to make sure at the time of execution that the matter of lien purported to be given by the mortgage and bonds and the due recording of the mortgage in public offices has been given adequate and responsible consideration by the legal representatives of the debtor.

When the mortgage goes into default, if such should happen, it would be embarrassing to the trustee to have it shown that the lien was insufficient and that a small amount of investigation on its part would have disclosed its infirmities at the time of the execution of the mortgage and bonds.

9. Evidence as to the payment of any mortgage tax imposed by law. The practice of the various states as to mortgage tax differs, but as in some states a mortgage does not become a valid lien until the tax is paid, it is important for the trustee to have in its files evidence of the payment of any such tax legally imposed.

10. Specimen of the bond or notes to be issued. While the text of the bond is contained in the mortgage, it is a good practice for the trustee to have in its file for ready reference a specimen bond certified by the secretary of the company. This is particularly valuable if the authenticity of an outstanding bond is questioned, for the trustee may then not only verify the signatures of the company's and trustee's officers appearing on the bond, but it may also verify the form of bond, style of engraving, tint, and, in fact, every detail.

The papers described above indicate the usual requirements of a trustee. In some cases not all of the papers mentioned are required, and, in others, additional evidence

Form 1. — Mortgage Examination Guide (front).

Corporate Trust Department.

File No..... No. of counterparts.....

Date executed..... Counsel.....

Title of Account.....

Issue.....

Procedure to be observed in setting up Corporate Trust Department Records. Enter the following symbols in the column at the left to indicate action taken with respect to each requirement:

√=Fulfilled. F=Follow-up card prepared. O=Not applicable.

I. Enter execution in *(a)* Documents Executed Record, *(b)* New Business Record.

II. Report to *(a)* Officers' Meeting, *(b)* Executive Committee, *(c)* Development Department.

III. Prepare "History of Trust" Sheet.
- *(a)* Enter in ink the number of original counterparts executed and in pencil the number on file.
- *(b)* Enter document file number in red ink.

IV. Prepare Index Cards *(a)* Window file, *(b)* Officer's desk file, *(c)* Statistical Department, *(d)* Information desk file.

V. Send New Business Memos to:
- *(a)* Bond Registration Division, when Bankers Trust Company is Registrar.
- *(b)* Coupon Paying Division, when Bankers Trust Company is Coupon Paying Agent.
- *(c)* Commission Division. (This memo should eventually be filed in Reference Folder of Letter File.)

VI. Prepare Tickler Cards:
- *(a)* Maturity—Due date of issue and where payable.
- *(b)* General—(Duties of Trustee)
  1. Preparation of S. F. notices.
  2. Calling of bonds.
  3. Receipt of collateral under prior mortgages at maturity.
  4. Refiling as chattel mortgage.
  5. Cancellation of bonds on our records in case others act as Paying or S. F. Agents.
  6. Any other duties.
- *(c)* Trust Requirements (Duties of Mortgagor)
  1. Sinking Fund payments.
  2. Redemption notices.
  3. Insurance schedules.
  4. Financial statements.
  5. Equipment schedules.
  6. Any other requirements.

VII. For Equipment Trusts (if variety of equipment warrants) rule off a blank "Title of Trust" sheet and place next to "History of Trust" sheet, showing class, numbers, quantity, prices and dates of payments for equipment.

VIII. Obtain supporting documents (per reverse) and approval of counsel on execution of Indenture and documents.

IX. Ascertain that pledged collateral has been deposited and that Bankers Trust Company holds title thereto.

X. Write to Company for:
  (a) Signature Cards.
  (b) Insurance policies or first insurance schedule. For a schedule request annual date for filing.
  (c) Date fiscal year ends (when necessary and not shown by documents).
  (d) Any other information.

XI. Write prior trustees (letter usually to be prepared by counsel).
  (a) Send copy of above Indenture.
  (b) Call attention to our lien upon securities held by them or restrictions of above Indenture upon issuance of their bonds, etc.
  (c) Ask for copy of their mortgage.
  (d) Send any other notices.

XII. Memos to Corporate Trust Department re:—
  (a) Preparation of card as to splitting of temporaries and definitives and any charges.
  (b) Notation of collection cards as to disposition of interest or dividends on collateral.
  (c) Conversion privilege.

XIII. Memo to Statistical Department of statements expected from Company.

XIV. Memo to Document File Clerk when firm, other than — & —, acts as our counsel.

XV. Obtain all recorded originals or evidence of recording and enter on records.

XVI. Obtain supply of printed copies of Indenture for our files.

Examination completed

Date.....By.....

(This record, when completed, should be filed in the Document Folder.)

Form 1.—Mortgage Examination Guide (back).

1. Certified copy of charter, or articles of incorporation, with all amendments.

2. Certified copy of by-laws of the Company.

3. Copy of minutes, certified by the Secretary of the Company under its corporate seal, showing proceedings of the board of directors, and in cases where the law under which the Company is incorporated so requires, the proceedings of the stockholders, by which the execution of the mortgage and bonds are authorized.

4. Certified copies of any certificates of consents of stockholders or of their proceedings in those jurisdictions where the law requires such to be filed.

5. Certificate of the election of officers of the Company executing the mortgage and the bonds, with certified specimen signatures.

6. Order of approval of any public service commission or other body having jurisdiction over the bond issues of the mortgagor company.

7. Opinion of counsel to the mortgagor company that the indenture gives the lien which it and the bonds issued under it purport to create.

8. Opinion of counsel to the mortgagor company that the indenture need not be filed as a chattel mortgage, or evidence that it has been so filed.

9. Evidence as to the payment of any mortgage tax imposed by law.

10. Specimen of bond or note.

may be desirable. The question is primarily legal, and each case should be passed on by the trustee's counsel. Many trust companies, however, furnish, for the convenience of corporation officers and counsel, a printed list of documents usually required in setting up a corporate trust. In requiring these proofs the trustee is actuated, first, by the sense of duty which any person entering into a serious contract should possess to see that all the surrounding circumstances of the contract are entered into with due authority and with the observance of all proper safeguards; and, second, by the circumstance that the documents above-mentioned, or most of them, are readily to be obtained at the time of the execution of the mortgage, but might become more difficult to obtain after the lapse of years, when, perhaps, by reason of defaults and by disagreements in the construction of the mortgage, the debtor has become unwilling to furnish proofs, or to disclose its private record to the trustee.

Examination of mortgage by the trustee.—Promptly upon execution of a mortgage the trust department will read and thoroughly analyze all of its provisions, in order that its records of the trust may be properly set up, and the necessary steps taken to see that the trustee's duties are accurately and promptly performed. While the trustee's general records are discussed in the next chapter, the "mortgage examination guide," [5] illustrated on page 30, will indicate the general scope of this examination.

While, generally speaking, the items on the mortgage examination guide appear to be self-explanatory, perhaps a brief statement on one or two points is desirable. The "development department" referred to in Item II is a modern and broader designation for the "new business department." It is important that in any company making an organized effort to develop and expand its business, the department having control of this effort be notified promptly of each piece of new business received. Item V is important only in the case of trust departments which have been subdivided into distinct divisions. Similarly, Item XIII applies only if there is a separate statistical department, in which case that department

[5] This form is reproduced through the courtesy of the Bankers Trust Company, New York.

should be informed of statements expected to be received, in order that such statements may be delivered to the trust department, and not retained in the files of the statistical department. The supporting documents referred to in Item VIII are those described on page 27 to 29 [(1) to (10) inclusive] which, for convenience, are listed on the back of the mortgage examination guide.

Item XI, relating to prior trustees, has to do with a very important matter. In many cases a mortgage pledges property or securities, subject to the lien of existing mortgages. It is then of real importance that the trustee notify prior trustees of the newly created subordinate lien and warn such prior trustees that, upon the extinguishment of the prior liens, the property or securities may not be redelivered to the mortgagor company, but must be delivered to the trustee under the new lien. Sometimes, also, the new mortgage may contain a covenant "closing" prior mortgages,[6] that is, an agreement that no further prior lien bonds shall be issued. Similarly, the prior trustees should be placed on notice of such a covenant.

---

[6] See footnote, page 90.

Chapter IV

CORPORATE TRUST RECORDS

Corporate trust records.—In presenting this material the authors are fully aware of the difficulty of prescribing any set of forms which would be applicable, in their entirety, even to a small percentage of banks and trust companies engaged in corporate trust business. Widely different conditions exist. The institution with a dozen trusteeships will not feel the necessity for some of the records which are indispensable to the administration of several hundred trusts. Nevertheless, every corporate trustee is likely to have situations arise which will emphasize the value of complete records.

This chapter is based on the records of a single company for several reasons: (1) the manifest advantage of continuity in describing one complete departmental system, rather than the outstanding features of several different systems; (2) the essential simplicity of the system described, although at first glance it may appear somewhat complex; and (3) the authors' greater familiarity with these records.[1]

As will be noted from the accompanying cuts, loose-leaf records have been used wherever practicable. The convenience and flexibility of such records recommend their general use and account for their adoption by most of the larger institutions doing a fiduciary business. In all cases where loose-leaf records are used by trust departments, it is important that there be a complete and independent audit of the work so recorded. Many trust departments follow the practice of retaining bound volumes for all books of original entry. This furnishes an additional safeguard, and may be of considerable value in case it becomes necessary to submit the records as legal evidence.

In the following discussion a cut is given of each record with a brief statement of its purpose and use.

---

[1] Those of Bankers Trust Company, New York City. Records of the Corporate Agency Departments are discussed in Chapters XVI to XVIII and Fee Records in Chapter XIX.

Title of Trust | Document File No.

Bankers Trust Co., Trustee under | Dated | Mortgagor Co., organized under Laws of

Refiling | Insurance

Bonds, designated as | Due | Payable at

Authorized issue $ | Redemption | Lost or mutilated

Registered at | Fully Registered Certificates Interchangeable at

Sinking Fund

Coupons, due | Payable at | Rate

Dates		Document No.	Record of Documents and History of Administration of Trust	Recorded as Mortgage: Date	State	County	Book	Page
			Indenture executed in counterparts this date counterparts on file					
			Certified copy of charter or articles of incorporation, with all amendments.					
			Certified copy of by-laws of the Company.					
			Copy of minutes, certified by the Secretary of the Company under its corporate seal, showing proceedings of the board of directors, and in cases where the law under which the Company is incorporated so requires, the proceedings of the stockholders, by which execution of the mortgage and bonds are authorized.					
			Certified copies of any certificates of consents of stockholders or of their proceedings in those jurisdictions where the law requires such to be filed.					
			Certificate of the election of officers of the Company executing the mortgage and the bonds, with certified specimen signatures.					
			Order of approval of any public service commission or other body having jurisdiction over the bond issues of the mortgagor company.					
			Opinion of counsel to the mortgagor company that the indenture gives the lien which it and the bonds issued under it purport to create.					
			Opinion of counsel to the mortgagor company that the indenture need not be filed as a chattel mortgage, or evidence that it has been so filed.					
			Evidence as to the payment of any mortgage tax imposed by law.					

Form 2.—History of Trust.

Record of trusts.—The day-to-day transactions of each trust are compiled on Forms 2 to 7, termed, collectively, the "record of trusts." Separate binders for exchange, redemption, and securities sheets (Forms 5 to 7) facilitate posting and audit.

FORM 830

DOCUMENT FILE NO.

Title of Trust

INSTRUCTIONS:

This sheet will be opened for every new series of bonds which differs from the first series. The History of Trust sheet should be appropriately noted with reference to this sheet both as to execution and recording.

SERIES

SUPPLEMENTAL INDENTURE DATED:

_____ COUNTERPARTS EXECUTED _____ ON FILE.

BONDS DESIGNATED AS:

DUE:

PAYABLE AT:

AUTHORIZED ISSUE: $

SINKING FUND:

REDEMPTION:

REGISTERED AT:

FULLY REGISTERED:

COUPONS DUE _____ RATE _____

PAYABLE AT:

COMPANY DOES _____ ASSUME 2%

NORMAL FEDERAL TAX, AND

NOTATION OF ANY OTHER DIFFERENCES

WITH FIRST SERIES.

RECORDED AS _____ MORTGAGE.

DATE	STATE	COUNTY	BOOK	PAGE

Form 2A.—History of Trust (supplementary sheet).

Title of Trust _____ Series _____ Rate _____ %

Form of Bonds Compared by _____ Due _____ Interest Dates _____

BONDS RECEIVED						BONDS CERTIFIED (For details see Corporate Trust Certification Blotter)			
Date	Received From	Numbers	Denomination	Coupon Attached	Principal Amount	Date	Numbers	Denomination	Principal Amount

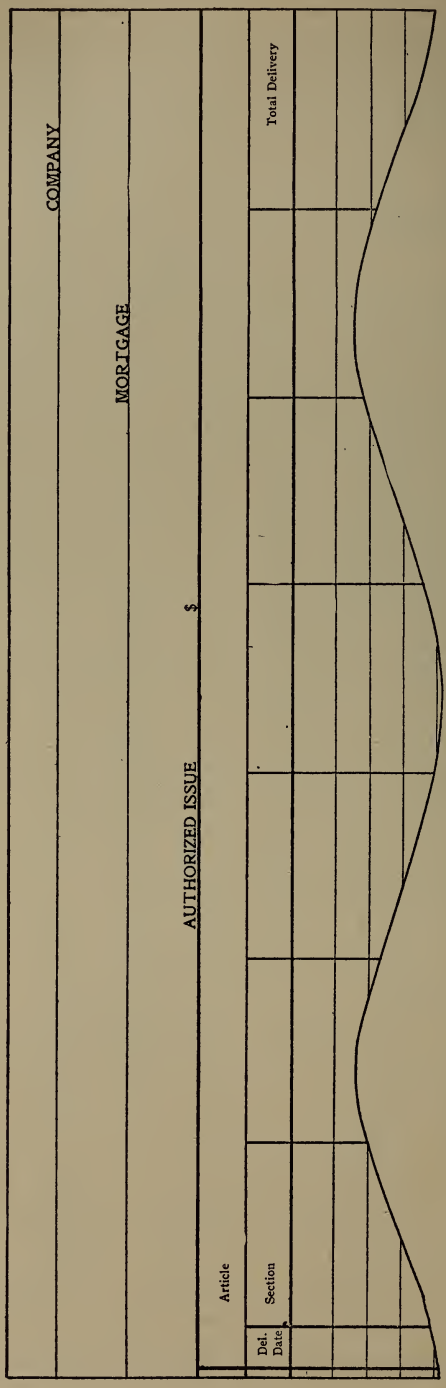
Form 3.—Record of Bonds Issued (Front).

Title of Trust _____ Total Authorized Issue, $ _____

SUMMARY OF BONDS DELIVERED, CANCELLED AND OUTSTANDING

Date	Authority		Particulars (For details of exchange deliveries, see Exchange Record)	Coupon Attached	Bond Numbers	Delivered	Cancelled	Outstanding	Memoranda	
	Article	Section							Withdrawn from Vault	Balance in Vault

Form 3.—Record of Bonds Issued (Back).



Form 4.—Summary Sheet.

Immediately upon the execution of a new mortgage, a "history of trust sheet" is opened and the salient features of the indenture noted thereon in the spaces provided at the top of the sheet (Form 2). The columns at the right are reserved for mortgage recording data. The remainder of the sheet is devoted to a chronological history of the administration of the trust compiled from documents received or originated by the trustee. Before being entered each document is endorsed with a brief typewritten summary of its subject matter and is assigned a number. The entry of documents usually required at the time of the acceptance of the trust is simplified through printing on this sheet a schedule of such documents. In addition to its value as a history, this sheet forms a comprehensive and convenient document index. In dealing with a mortgage authorizing the issuance of bonds in series, a "supplementary sheet" (Form 2 A) is used for each new series, as it is impracticable to summarize more than one series on the main history of trust sheet.

The "record of bonds issued sheet" (Form 3) is the control record of bonds received, certified, delivered, and canceled. It indicates, at a glance, the status of a bond issue. Postings to these sheets are made from the "security tickets" (Forms 10 to 15), with the exception of bond certifications, which are posted from the "certification blotter" (Form 9). Any delivery which does not constitute an additional issue under the mortgage is "circled" without increasing the total of bonds delivered. The delivery of a duplicate in lieu of a lost bond is an example of an entry of this kind. In the two memoranda columns on Form 3 (back) are recorded entries affecting the amount of bonds held in the vault awaiting certification or delivery. When, as in most large modern mortgages, issues of bonds are authorized under several sections, a "summary sheet" (Form 4) is used to provide a continuous record of the amount of bonds outstanding under each section, and to prevent an overissue under any section. This sheet is filed directly following the "bonds issued" sheet and entries are made as the record of bonds issued is posted.

The "exchange sheet" (Form 5) comprises the detailed record of bond exchanges, that is, *(a)* the delivery of definitive (permanent) bonds upon the cancellation of temporary bonds, or *(b)* interchange of denominations, referred to in the par-

Form No. 570 E

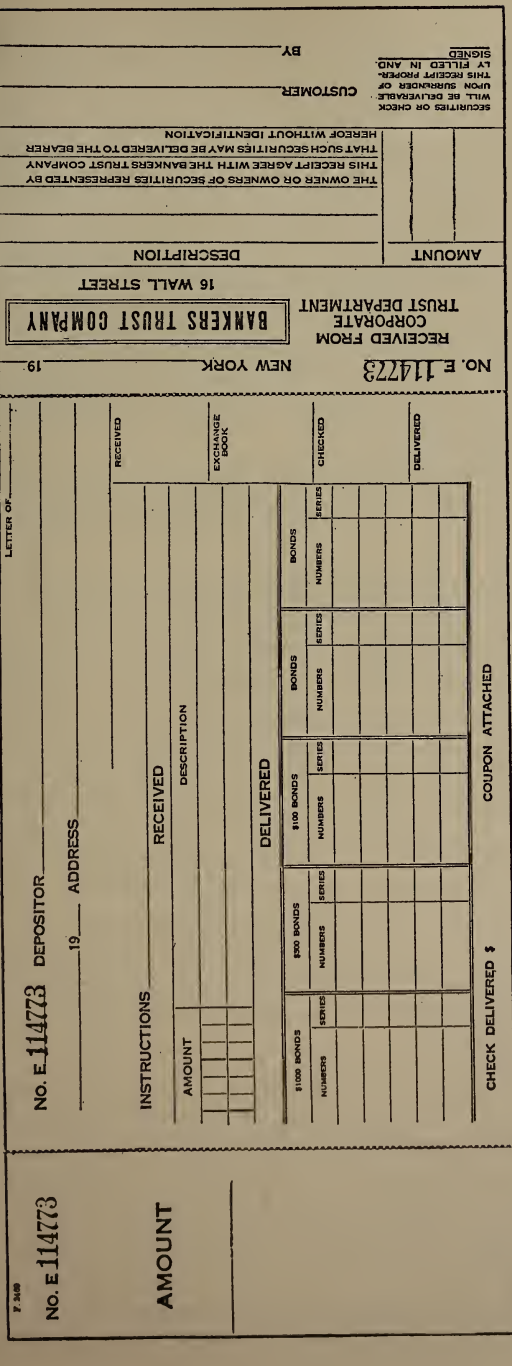
Title of Trust

Authorized Amount of this Exchange, $

DETAILED DELIVERIES and BOND EXCHANGES

RECEIVED IN EXCHANGE					DELIVERED				
Date	Depositor	Numbers	Maturity	Amount	Numbers	Coupon Attached	Fee or Adjustm't	Amount	Receipt Number

Form 5.—Exchange Sheet.



Form 5A.—Exchange Ticket.

lance of the bond houses, as "splits." The number of the "exchange ticket" (Form 5A) is inserted after each entry, so that ready reference can be made to the customer's receipt. Form 5A is a numbered ticket which originates when securities are received for exchange from temporary to permanent form, or for interchange of denominations. The ticket is divided into three sections: (1) the customer's receipt; (2) the body of the ticket, which remains with the new securities until they are delivered; and (3) the auditor's stub, which is attached to the canceled securities. The exchange sheet is also used to record conversions of one class of security into another, say, bonds into stock. A "title sheet" (Form 5B), giving data and instructions as indicated thereon, precedes each account in the exchange record.

The method of exchanging temporary for permanent bonds, conformably with the records described in this chapter, is as follows:

The temporary bonds are received over the counter or by mail and (after preparation of exchange tickets) are entered on the exchange record (Form 5), opposite which are entered the permanent securities, when allotted. At the end of the day (1) the exchange record is totaled, (2) the surrendered bonds are counted, and (3) the total of the permanent bonds allotted is calculated by the difference between the lowest serial number of the bonds available at the beginning of the day and the lowest serial number of the bonds remaining at the close of the day's business. These three figures must agree. The bonds surrendered are then canceled, and placed in a safe available to the auditors, who, on the following morning, verify the canceled bonds against the amount of permanent bonds shown by the exchange record to have been delivered.

The exchange record serves, so far as exchange transactions are concerned, as a book of original entry, and no entry is made in the corporate trust blotter. As soon as the department is to commence an exchange, a memorandum ticket is prepared covering the amount of permanent bonds allocated to the exchange. This ticket is posted to the record of bonds issued (Form 3) as a delivery in exchange for temporary bonds, with a reference to the exchange record for details. At the same time a cancellation entry is made in the record

F341

EXCHANGE RECORD TITLE SHEET

DOCUMENT FILE NO.

CLASSIFICATION

ACCOUNT

ISSUE SERIES

DATED DUE %

INTEREST DATES TRUSTEE

VAULT INDEX

EXCHANGE (E)

DEFINITIVES ISSUED IN EXCHANGE FOR

DENOMINATION OF DEFINITIVES

$1000 $500 $100

DENOMINATIONS TO BE DELIVERED

COUPON TO BE ATTACHED

INTERDENOMINATIONAL EXCHANGE (S)

INSTRUCTIONS RECEIVED TO { CONSOLIDATE / SPLIT

CHARGES

CONVERSION (C)

PROVISIONS

CASH ADJUSTMENT

DISPOSITION OF SECURITIES

SPECIAL INSTRUCTIONS

TICKETS { RBI / COLLATERAL

REPORTS

CASH

STOP NUMBERS

Form 5B.—Exchange Record Title Sheet.

F. 3162

TITLE **ACCOUNT**

Due Total Par Value $ Disposition of Securities

Called @ Stop Payment Numbers

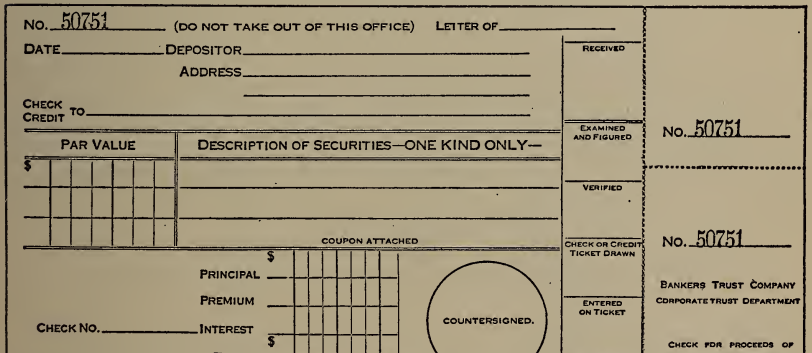
REMARKS

Date	Ticket Number	Par Value	Premium	Interest	Total	Date	Ticket Number	Par Value	Premium	Interest	Total
	Brought Forward						Brought Forward				

Form 6.—Redemption Sheet.

of bonds issued, covering the cancellation of all the temporary bonds. The advantage of keeping the mass of detail involved in such an exchange on subsidiary, rather than on the main trust records, is obvious.

Payments of bonds, whether at maturity or upon prior redemption or purchase, are entered on the "redemption sheet" (Form 6) from the "redemption ticket" (Form 6A) which carries full details of the transaction. While this sheet and ticket are similar in principle to those used for exchanges, an important difference lies in the omission from the redemption record of the depositor's name and the bond numbers, the latter being entered on the back of each ticket.


NO. 50751 (DO NOT TAKE OUT OF THIS OFFICE) LETTER OF

DATE DEPOSITOR

ADDRESS

CHECK CREDIT TO

PAR VALUE | DESCRIPTION OF SECURITIES—ONE KIND ONLY—

$

COUPON ATTACHED

PRINCIPAL $

PREMIUM

CHECK NO. INTEREST $

TOTAL

REMARKS

COUNTERSIGNED.

NOS. ENTERED ON REVERSE

P. 3183

RECEIVED

EXAMINED AND FIGURED

VERIFIED

CHECK OR CREDIT TICKET DRAWN

ENTERED ON TICKET

ENTERED IN REG. BOOK

No. 50751

No. 50751

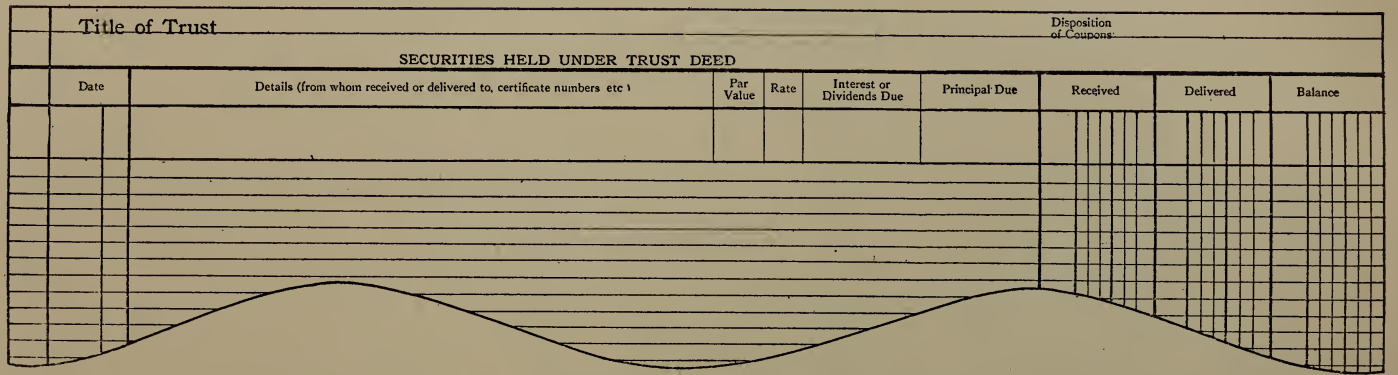
BANKERS TRUST COMPANY
CORPORATE TRUST DEPARTMENT

CHECK FOR PROCEEDS OF SECURITIES REPRESENTED BY THIS TICKET WILL BE DELIVERED AGAINST SURRENDER HEREOF AND PROPER IDENTIFICATION

Form 6A.—Redemption Ticket.

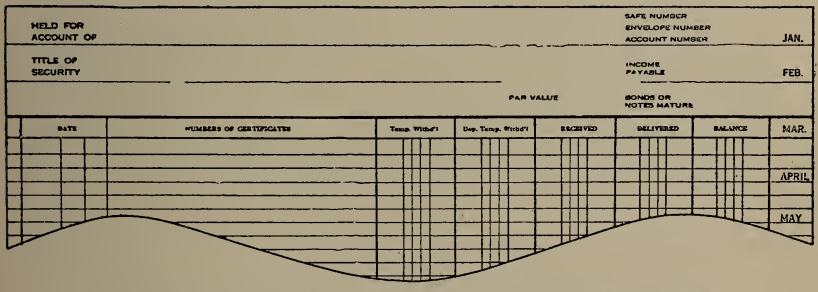
The elimination of this data relieves the department of a considerable burden of detail and materially accelerates service at times when speed is essential. Exchange and redemption tickets are consecutively numbered, and carefully preserved, and every ticket number must be accounted for at the close of each day's business. On the day following their payment all canceled bonds are counted by the auditors and the total of each issue proved to the departmental figures. In other words, the auditors treat the canceled bonds as vouchers and there must be canceled bonds to an amount equivalent to the cash disbursed for bonds during each day's business. The canceled bonds, as audited, are stamped or perforated by the auditors to guard against the possibility of a resubmission of the same bonds.

Securities other than those received for one of the purposes heretofore mentioned are posted to the "securities ledger"



Form 7.—Securities Ledger.

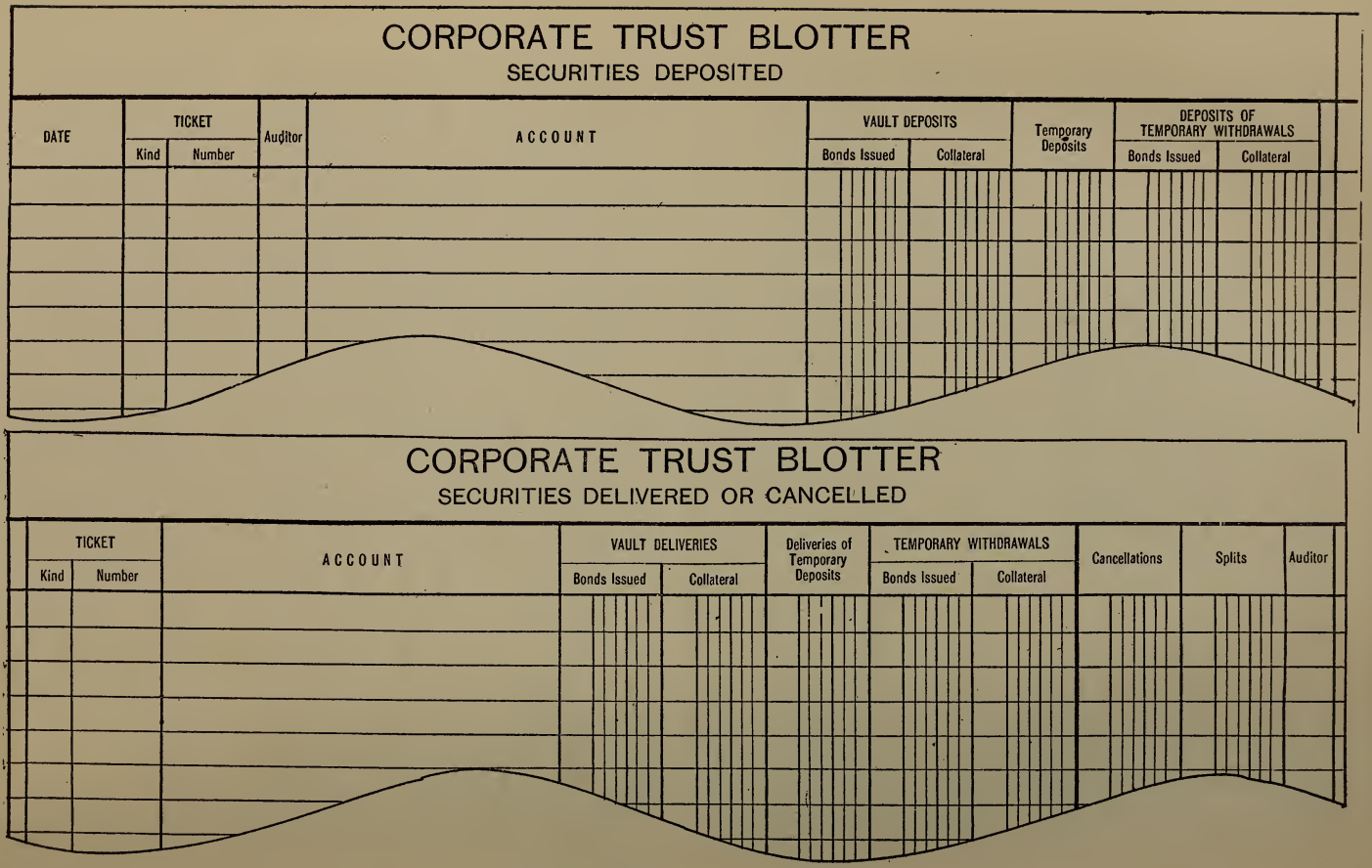
(Form 7). A large percentage of accounts in this record represents securities pledged as collateral. The sheets are ruled with four sections to a page, each section normally pertaining to a different class of security; but an entire sheet may be devoted to one security if circumstances so require. Under some trusts, where a large number of different securities are handled by the trustee, Form 7A may be considered preferable to Form 7. Only one security is entered on each sheet of Form 7A. This type of sheet is most useful in very active accounts.



Form 7A.—Securities Ledger (suitable for active accounts)

Blotters.—The "corporate blotter" (Form 8) is a summary of the receipt, delivery, and cancellation of securities. Transactions are entered in the blotter from the security or "vault tickets" (Forms 10 to 15) which will be explained presently. The "certification blotter" (Form 9) is designed to record, authorize, and provide a means for audit of the certification of securities. Under each sheet of this record (which is in book form with 8 numbered divisions to a page) are correspondingly numbered perforated slips. The carbon copy on the perforated sheet (Form 9A) is detached, initialed by a departmental officer, and presented to the officer signing the bonds as his authority for so doing. The signing officer retains the slip and delivers it to the auditors.

Security transactions.—No securities are received or delivered by the department except upon authority of a security or "vault ticket" (one of Forms 10 to 13) initialed by an officer. Entries in the corporate blotter are made from these tickets, and postings to sheets 3 and 7 are based on the posting copies (carbon copies) of the tickets.



CORPORATE TRUST BLOTTER

SECURITIES DEPOSITED

DATE	TICKET		Auditor	ACCOUNT	VAULT DEPOSITS		Temporary Deposits	DEPOSITS OF TEMPORARY WITHDRAWALS	
	Kind	Number			Bonds Issued	Collateral		Bonds Issued	Collateral

CORPORATE TRUST BLOTTER

SECURITIES DELIVERED OR CANCELLED

TICKET		ACCOUNT	VAULT DELIVERIES		Deliveries of Temporary Deposits	TEMPORARY WITHDRAWALS		Cancellations	Splits	Auditor
Kind	Number		Bonds Issued	Collateral		Bonds Issued	Collateral			

Form 8.—Corporate Blotter.

DATE_____ NO. 17664

CERTIFIED BY_____

TITLE _____

_____ AMOUNT $ _____

NOS._____ DENOMINATION $_____

_____ _____

_____ _____

BONDS COMPARED_____

EXAMINED FOR EXECUTION BY_____

EXAM'D FOR CERTIFICATION BY_____

TAX STAMPS _____

POSTED _____

Form 9.—Certification Blotter.

TRUST DEPARTMENT.

BANKERS TRUST COMPANY

DATE_____ NO. 17664

MR._____ PLEASE CERTIFY THE FOLLOWING

TITLE _____

_____ AMOUNT $ _____

NOS._____ DENOMINATION $_____

_____ _____

_____ _____

FORM OF BOND HAS BEEN COMPARED WITH MORTGAGE AND ISSUE IS PROPER _____ APPROVED FOR EXECUTION

By_____
TRUST DEPT.

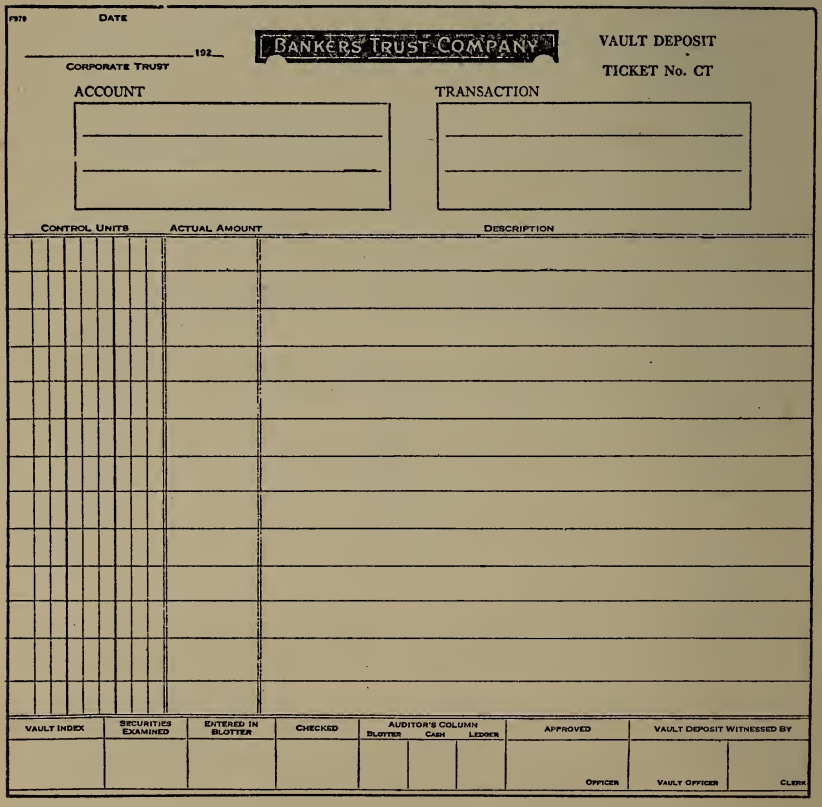
N. B.—THIS SLIP IS TO BE INITIALED BY THE SIGNING OFFICER AND PLACED IN AUDITORS BOX.

_____
SIGNING OFFICER

Form 9A.—Certification Slip.

All tickets are written or typed in duplicate with the exception of "temporary withdrawal tickets" (Form 13) which are typed in quadruplicate. The original vault tickets serve as authority to the vault for the withdrawal or deposit of securities. All trust securities in the vault are kept in double

combination safes and each deposit or withdrawal must be witnessed by (1) an officer or a vault officer, and (2) one of several designated clerks. After securities have been deposited or withdrawn the tickets are retained by the vault officer and delivered to the auditors. The auditors maintain an independent set of control ledgers which are proved from time to time with the ledgers of the trust department. We shall first explain the vault control system in a general way and then make a more detailed examination of the form of the tickets.



Form 10.—Vault Deposit Ticket.

The vault control is based on a system of control units established as follows:

A. For corporate bonds, notes, and like securities, including deposit receipts therefor (where bonds are canceled the

title of account should so state), each dollar or other standard of currency in which principal amount or par value is expressed.

B. For "bonds and mortgages" and other evidence of indebtedness not otherwise provided for, each dollar or other standard of currency of unpaid principal.

C. For stock, each share and part of a share contained in each certificate.

D. For subscription warrants and receipts and participation receipts, each share or dollar, as the case may be, in which the face of the warrant or receipt may be expressed.

E. For all other valuables not in support of an item under control, each paper, package, or single article.

Securities and other valuables having been assigned a value under control units must, thereafter, in all transactions, retain

DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

VAULT DEPOSIT POSTING TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS	ACTUAL AMOUNT	DESCRIPTION

VAULT INDEX	SECURITIES EXAMINED	ENTERED IN LEDGER	CHECKED	PROPERTY CARDS			SYMBOL
						NEW STENCIL	
						INCREASE STENCIL TO	TITLE PLATE
						NO STENCIL REQUIRED	

Form 10A.—Vault Deposit Posting Ticket.

that value, unless suitable adjustments of account, including the control, are made.

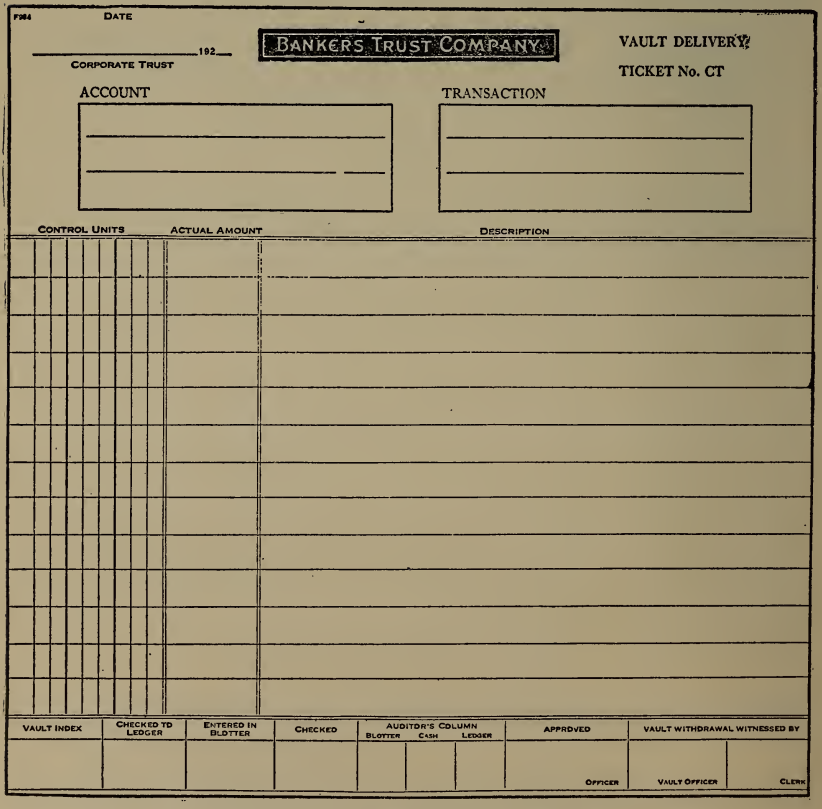
Payments on account are treated as follows:

A. Upon "bonds and mortgages" and other evidence of indebtedness, as deliveries.

B. Upon subscription warrants and participation receipts, as memoranda. They are entered "short" in the ledgers upon the deposit side. When subscription warrants or participation receipts are temporarily withdrawn for payments thereon, such payments are made to appear on the deposit or temporary withdrawal slip. The amounts of such payment are *not* included in the control.

Papers in support of the items under control, unless they

be in the form of collateral having an independent value, need


F984 DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

VAULT DELIVERY TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS | ACTUAL AMOUNT | DESCRIPTION

VAULT INDEX | CHECKED TO LEDGER | ENTERED IN BLOTTER | CHECKED | AUDITOR'S COLUMN: BLOTTER, CASH, LEDGER | APPROVED: OFFICER | VAULT WITHDRAWAL WITNESSED BY: VAULT OFFICER, CLERK

Form 11.—Vault Delivery Ticket.

not be entered in the control, but must be fully described in the appropriate record and be jacketed and kept with their respective control items.

Cents, and denominations of currency smaller than the standard money of account of other countries, are ignored in the control, though carried in the ledger accounts, as are the exact fraction of shares of stock.

DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

VAULT DELIVERY POSTING

TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS	ACTUAL AMOUNT	DESCRIPTION

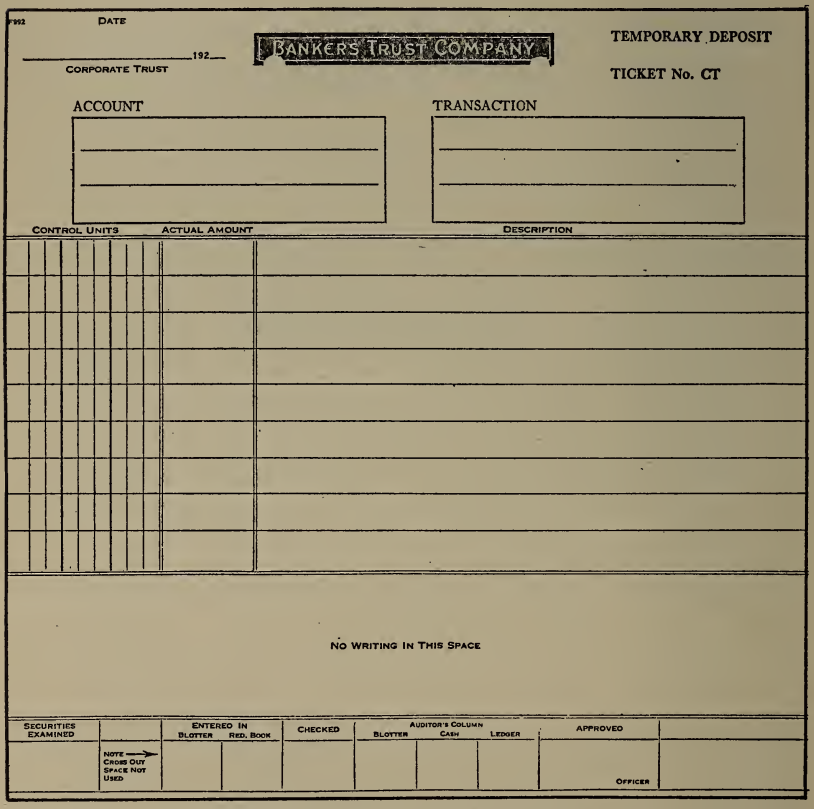
VAULT INDEX	CHECKED TO LEDGER	ENTERED IN LEDGER	CHECKED	PROPERTY CARDS		REMOVE STENCIL	SYMBOL
						DECREASE STENCIL TO	TITLE PLATE

Form 11A.—Vault Delivery Posting Ticket.

Jewelry and papers which it is undesirable to enter separately in the ledger are sealed after being inventoried and a copy of the inventory placed on the outside of the package and entered in the record of trusts showing the same in the control merely as a sealed package "details of contents as per record of trusts."

Many institutions employ a "dollar" rather than a unit control. Either scheme is satisfactory if consistently maintained in assigning control values to items such as no-par-value stock, foreign securities, and fractional shares.

With respect to the "temporary withdrawal" and "temporary deposit tickets" (Forms 12 and 13), it is worth while to note that the practice of the auditors is to retain the original


1912 DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

TEMPORARY DEPOSIT

TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS | ACTUAL AMOUNT | DESCRIPTION

NO WRITING IN THIS SPACE

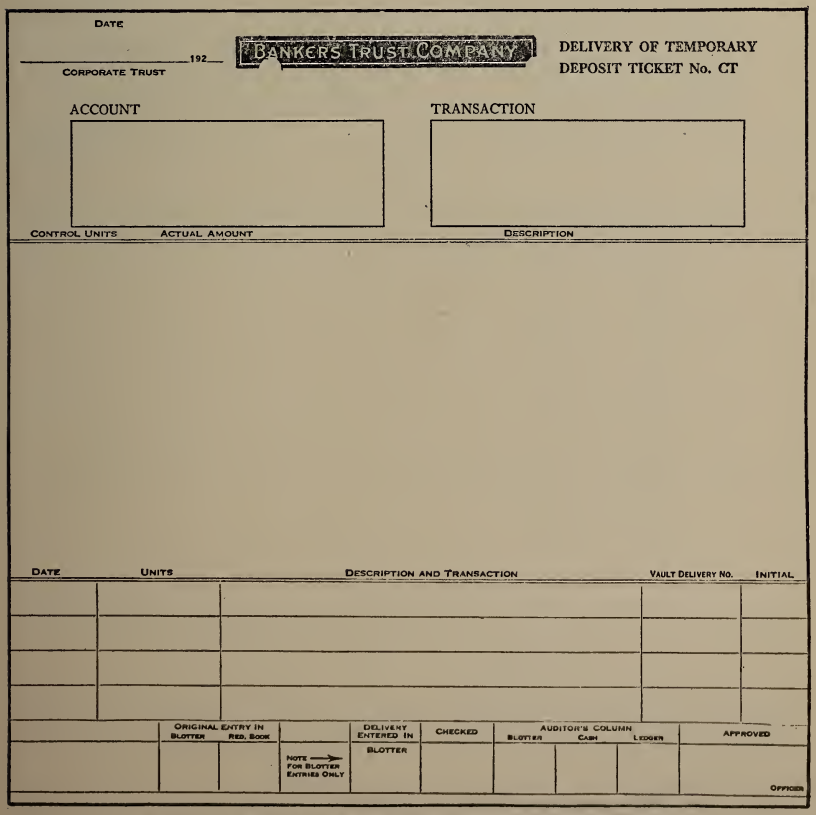
SECURITIES EXAMINED		ENTERED IN BLOTTER	ENTERED IN RED. BOOK	CHECKED	AUDITOR'S COLUMN BLOTTER	AUDITOR'S COLUMN CASH	AUDITOR'S COLUMN LEDGER	APPROVED	
	NOTE → CROSS OUT SPACE NOT USED							OFFICER	

Form 12.—Temporary Deposit Ticket.

of each ticket as an indication that the transaction is incomplete, while the department retains the carbon copy of the ticket until it is finally indorsed and used as a deposit or delivery ticket, as the case may be. Transactions not completed within a reasonable time are investigated by the auditors. The temporary tickets are not an essential part of the control system; but they are a great convenience to the trust depart-

ment in simplifying the recording of temporary transactions, and to both the department and the auditors in properly following up the completion of such transactions.

Forms 14 and 15 are "cancellation" and "split" tickets which are operated along the same lines as the vault tickets, although they do not affect the vault. The cancellation tickets are posted to the canceled column of the record of bonds issued (Form 3) and the "split" tickets are used to reduce the vault column balances on the same sheet.


DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

DELIVERY OF TEMPORARY DEPOSIT TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS ACTUAL AMOUNT DESCRIPTION

DATE	UNITS	DESCRIPTION AND TRANSACTION	VAULT DELIVERY NO.	INITIAL

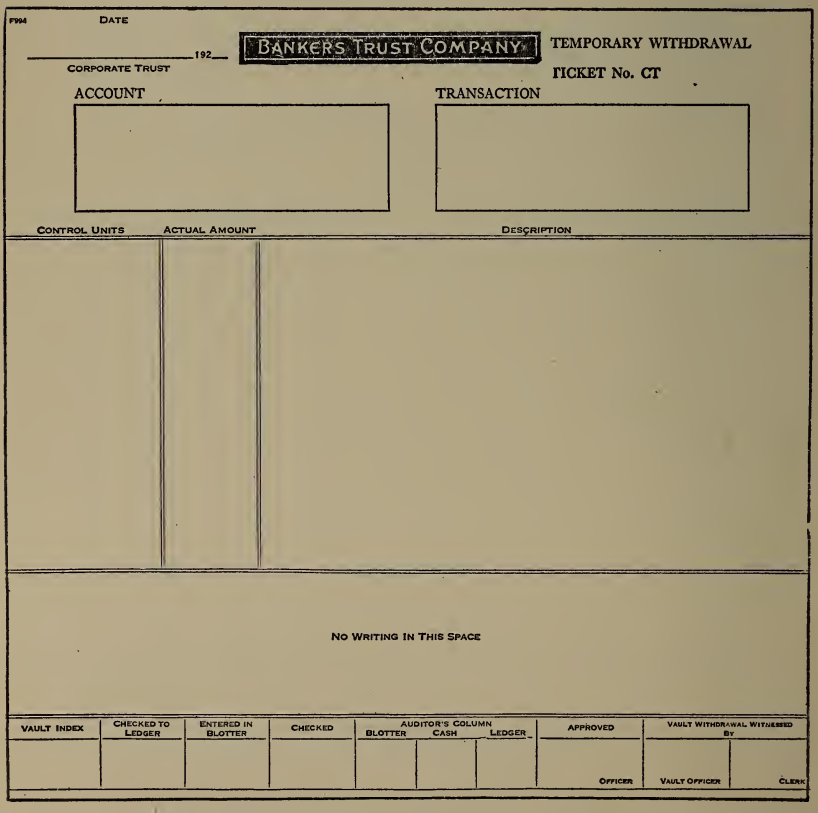
	ORIGINAL ENTRY IN BLOTTER	ORIGINAL ENTRY IN RED. BOOK		DELIVERY ENTERED IN	CHECKED	AUDITOR'S COLUMN BLOTTER	AUDITOR'S COLUMN CASH	AUDITOR'S COLUMN LEDGER	APPROVED
			NOTE → FOR BLOTTER ENTRIES ONLY	BLOTTER					OFFICER

Form 12A.—Delivery of Temporary Deposit Ticket.

It will be noted that all of the security tickets just described are uniform in size and general set-up. The entries under the heading of "transaction" at the top of each ticket should not be too brief to indicate, clearly, what has taken place. Information as to the source of the trustee's authority is always

valuable. For example, a typical explanation of a delivery of bonds would read "Delivered to ——, Treasurer of Company, pursuant to Article II, Section 1, of mortgage."

The column for actual amount is used only when that amount differs from the amount entered under control units. In the space for description should be entered complete details of the securities—the full title, interest or dividend dates and rate, maturity date, par value, and bond or certificate numbers.


F994 DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

TEMPORARY WITHDRAWAL

TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS | ACTUAL AMOUNT | DESCRIPTION

NO WRITING IN THIS SPACE

VAULT INDEX	CHECKED TO LEDGER	ENTERED IN BLOTTER	CHECKED	AUDITOR'S COLUMN BLOTTER	AUDITOR'S COLUMN CASH	AUDITOR'S COLUMN LEDGER	APPROVED	VAULT WITHDRAWAL WITNESSED BY	
							OFFICER	VAULT OFFICER	CLERK

Form 13.—Temporary Withdrawal Ticket.

The purposes of the blocked spaces at the bottom of each ticket are indicated by their titles. Each space is initialed or filled in as the ticket is passed along. The space for "property cards" on each posting ticket relates to Forms 16 and 17. These cards are indexed under the name of the security.

Reference to the card of any given security issue quickly determines the account or accounts interested in a situation bearing upon the status of the issue. As reports are received of changes in capitalization, reorganizations, bond redemptions, and so on, these cards are examined and appropriate action taken or suggested.

DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

TEMPORARY WITHDRAWAL

POSTING TICKET No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS	ACTUAL AMOUNT	DESCRIPTION

VAULT INDEX	CHECKED TO LEDGER	ENTERED IN LEDGER	CHECKED	PROPERTY CARDS		NEW STENCIL	SYMBOL
						INCREASE STENCIL TO	TITLE PLATE
						NO STENCIL REQUIRED	

Form 13A.—Temporary Withdrawal Posting Ticket.

The "stencil" information referred to on the posting ticket is for use in preparing or revising security stencils. These stencils, or embossed metal plates, are illustrated on page 63.[2]

The use of stencils greatly facilitates making up the "collection register" (Form 18) and the preparation of lists of securities required from time to time by mortgagors and others. In both cases the result is highly satisfactory. A

[2] Stencil cuts reproduced through courtesy of Addressograph Co.

collection register with each item stenciled is preferable to a hand-written record and, if the stencils are properly kept up, no collection items will be missed. The "symbols" appearing in the lower right-hand corner of each stencil card indicate the instructions in effect as regards income on the securities. For example:

C indicates all coupon items on which the interest is collected.

DH, coupon items from which the coupons are regularly detached and held for disposition.

DU, coupon items from which the coupons are detached and delivered *uncanceled.*

DX, coupon items from which the coupons are detached, *canceled,* and delivered.

DATE

_____ 192__

CORPORATE TRUST

BANKERS TRUST COMPANY

DEPOSIT OF TEMPORARY WITHDRAWAL TICKET

No. CT

ACCOUNT

TRANSACTION

CONTROL UNITS | ACTUAL AMOUNT | DESCRIPTION

DATE	UNITS	DESCRIPTION AND TRANSACTION	VAULT DEPOSIT NO.	INITIAL

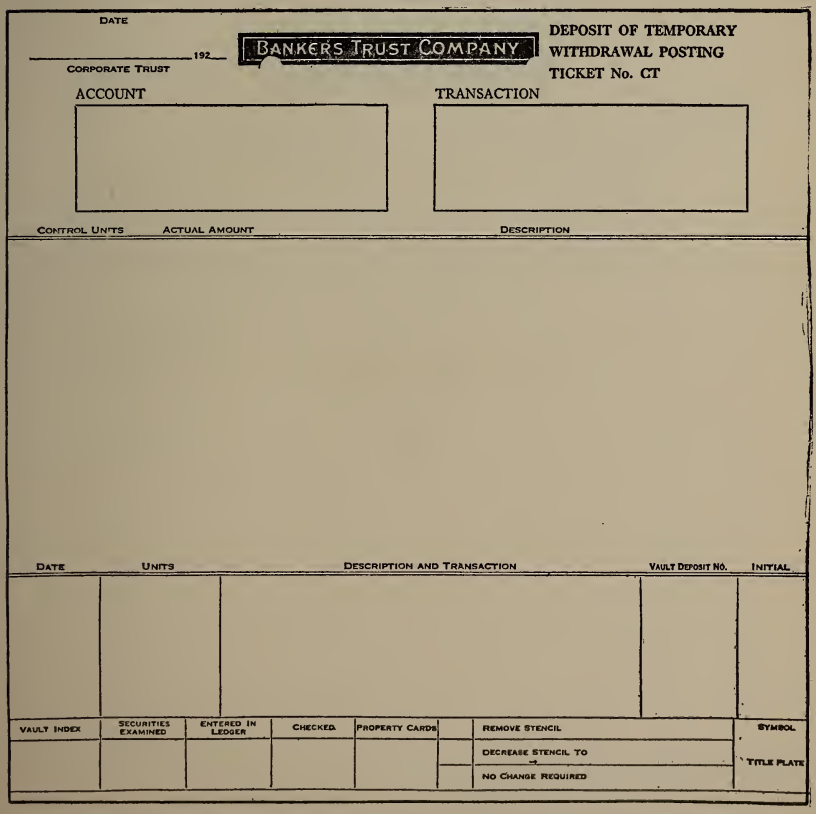
VAULT INDEX	SECURITIES EXAMINED	ENTERED IN BLOTTER	CHECKED	AUDITOR'S COLUMN BLOTTER	AUDITOR'S COLUMN CASH	AUDITOR'S COLUMN LEDGER	APPROVED	VAULT DEPOSIT WITNESSED BY	
							OFFICER	VAULT OFFICER	CLERK

Form 13B.—Deposit of Temporary Withdrawal Ticket.

O, coupon items from which coupons are not detached and other items on which income is not collected.

R, fully registered bonds, stock, or notes on which interest or dividends are regularly received.

S, items subject to special instructions.

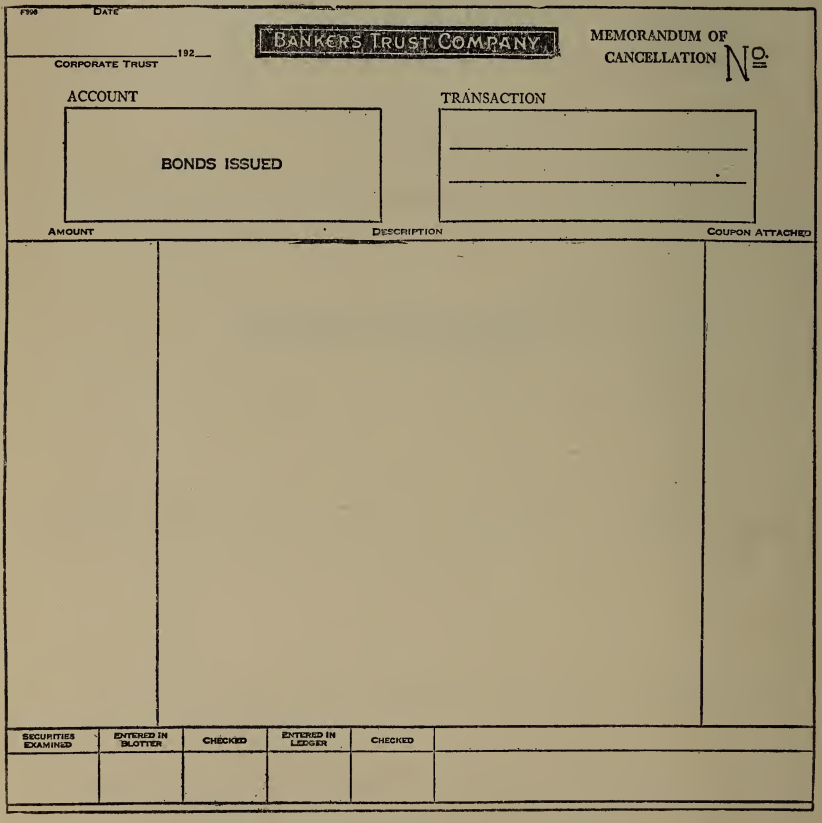


Form 13C.—Deposit of Temporary Withdrawal Posting Ticket.

Stencils are tabbed for the month in which interest or dividends are payable. For this purpose 6 tab positions are used, the first indicating January and July, the second, February and August, etc. Title plates (Fig. 4) show the title of account as it appears in the "security ledgers" (Forms 7 or 7-A). These, also, are appropriately tabbed. By use of an automatic selector it is possible to print only the stencils tabbed for a given month and to skip all others.

Some trust officers may feel that the volume of securities

passing through their departments does not justify the expense of a system involving all the operations just outlined. Under such circumstances, it is feasible to simplify the process of recording security transactions. Several methods present themselves; for instance, it would be practicable to eliminate posting tickets entirely and substitute a detailed blotter from

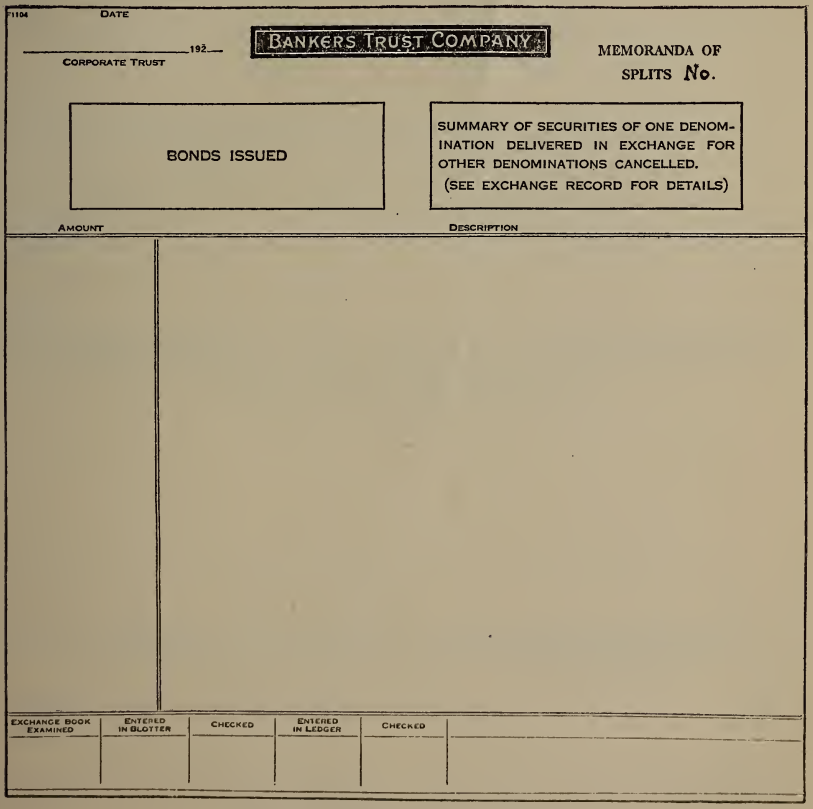


Form 14.—Memorandum of Cancellation.

which the ledgers would be posted. Another method probably could be worked out whereby the summary blotter would be retained and only a single copy prepared of each security ticket (except temporary withdrawal and temporary deposit tickets which would have to be in duplicate). Such a scheme would require the *posting* of each ticket to the ledger *before* its delivery to the vault or to the auditors.

The security stencils present many advantages to the trust

department whose business is large enough to warrant their installation. However, the cost of equipment and the salary of a specially trained operator must necessarily restrict the use of the stencil system to institutions where it can be justified on economic grounds.


1104 DATE

_____ 192—

CORPORATE TRUST

BANKERS TRUST COMPANY

MEMORANDA OF SPLITS No.

BONDS ISSUED

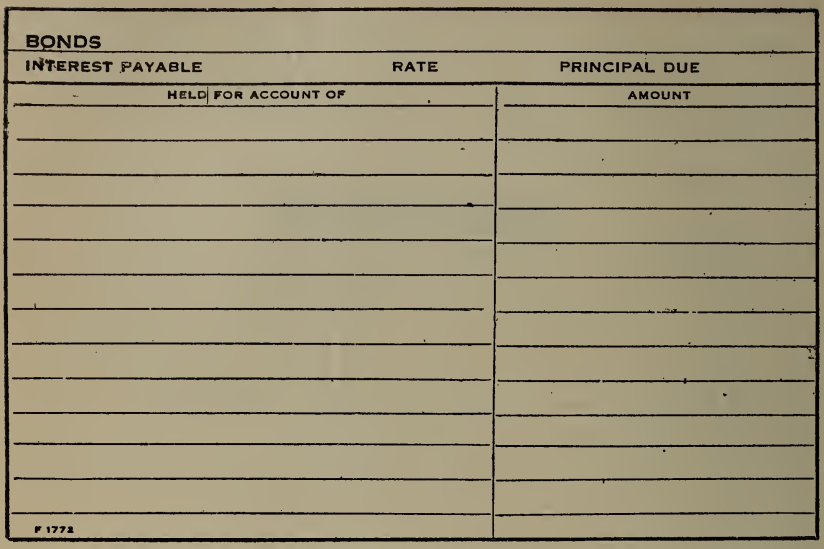
SUMMARY OF SECURITIES OF ONE DENOMINATION DELIVERED IN EXCHANGE FOR OTHER DENOMINATIONS CANCELLED. (SEE EXCHANGE RECORD FOR DETAILS)

AMOUNT | DESCRIPTION

EXCHANGE BOOK EXAMINED | ENTERED IN BLOTTER | CHECKED | ENTERED IN LEDGER | CHECKED

Form 15.—Memoranda of Splits.

As part of the securities control, the auditors make unannounced examinations of the department in addition to the regular examinations by directors, the clearing house, and the banking department. During these examinations the auditors' duplicate records are availed of by the examiners counting the contents of the vault, thus permitting the undisturbed use by the department of its own records. "Customers verifications" of each account (Form 19) are secured periodically by the auditors and checked with the trust department records.

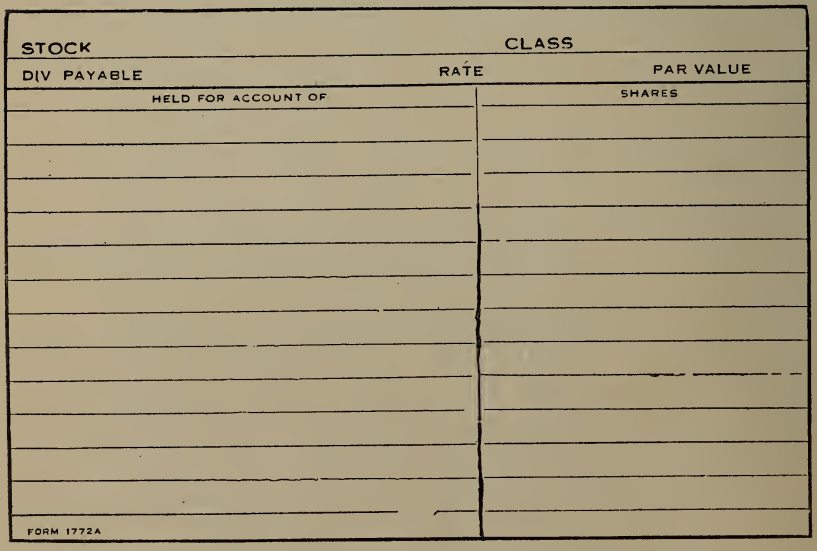

BONDS

INTEREST PAYABLE RATE PRINCIPAL DUE

HELD FOR ACCOUNT OF | AMOUNT

F 1772

Form 16.—Property Card (Bonds).


STOCK CLASS

DIV PAYABLE RATE PAR VALUE

HELD FOR ACCOUNT OF | SHARES

FORM 1772A

Form 17.—Property Card (Stock).

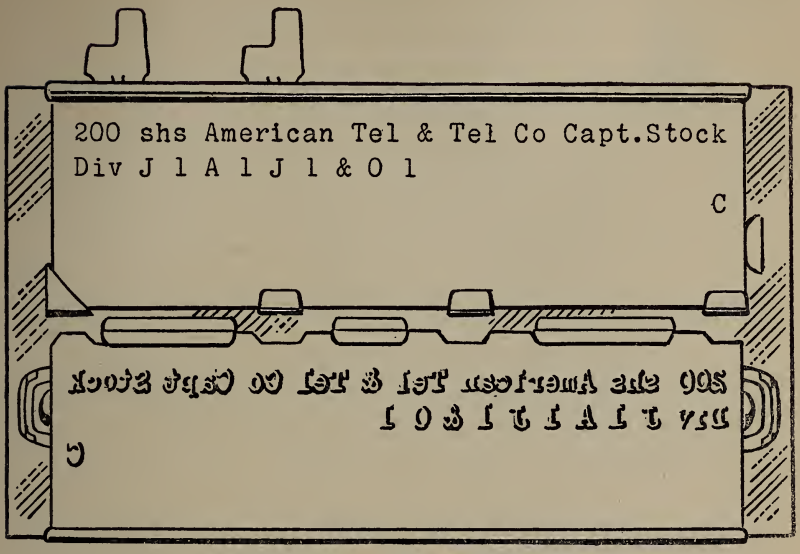


Fig. 2.—Security Stencil (Stock).

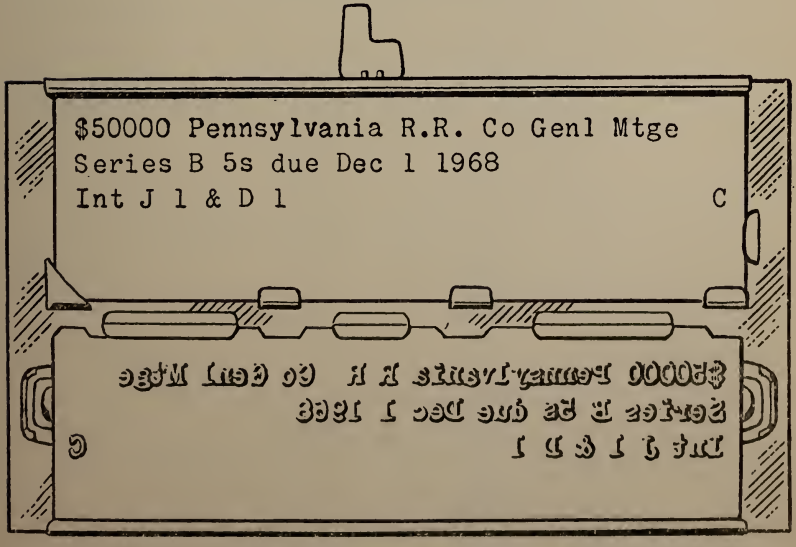
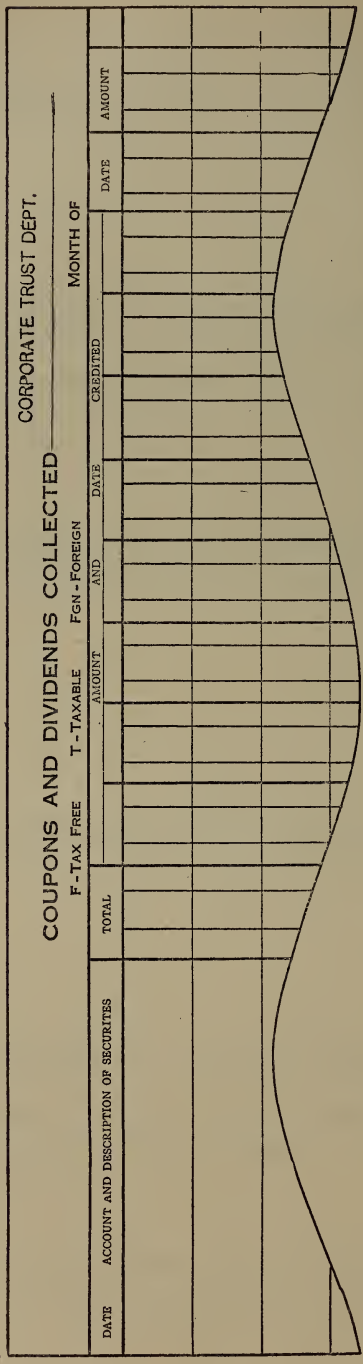


Fig. 3.—Security Stencil (Bonds).



Form 18.—Collection Register.

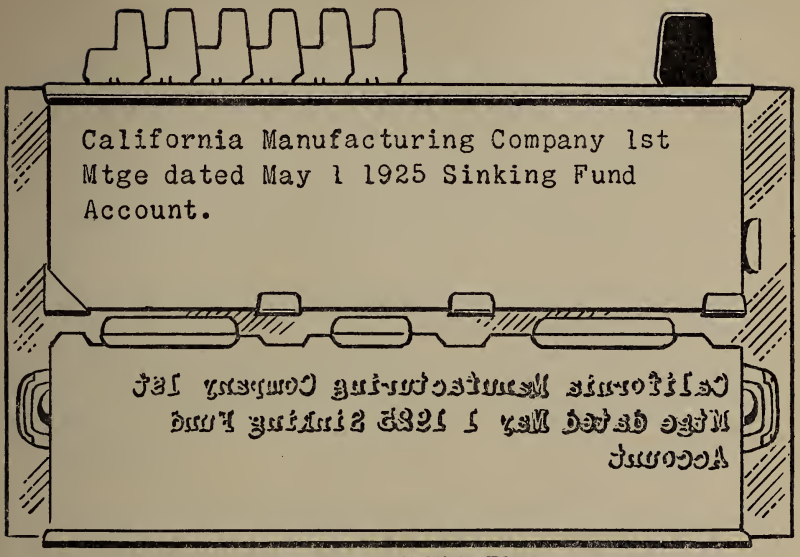


Fig. 4.—Stencil Title Plate.

Corporate Trust Dept.

BANKERS TRUST COMPANY

No. C. 31

New York,_____

Dear

Please find below statement of securities held by this Company at close of business_____

for the account of_____

If you find that the statement agrees with your records please sign the attached verification and return it to us in the enclosed addressed envelope, retaining the original for your files.

Par Value of Bonds or Number of Shares of Stock	DESCRIPTION OF SECURITIES

To_____

Very truly yours,

BANKERS TRUST CO.

By_____

ASST. SECRETARY

Form 19.—Customer's Verification (Original).

No. C. 31

The Auditor,
Bankers Trust Co.,
New York.

Dear Sir:

The statement of securities held by the Bankers Trust Company at close of business _____

for the account of _____

_____

as listed below is hereby acknowledged and agrees with our records.

Par Value of Bonds or Number of Shares of Stock	DESCRIPTION OF SECURITIES

From _____

_____ _____

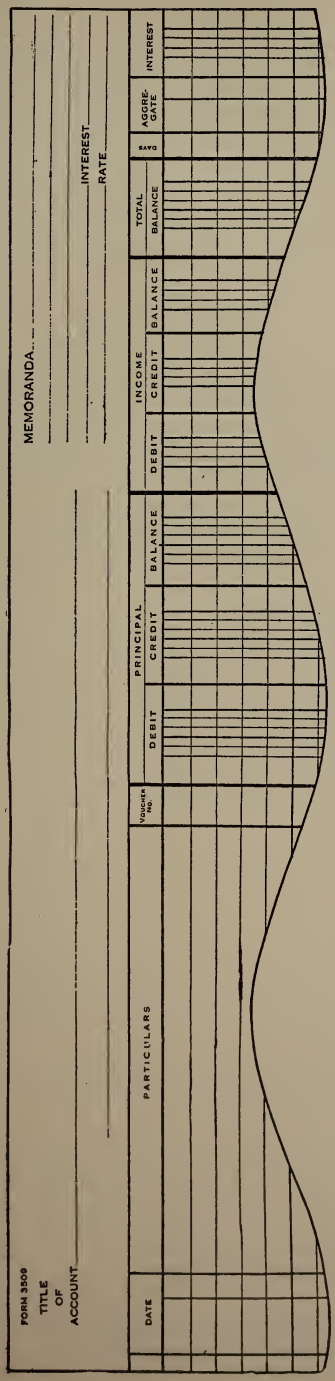
_____ By _____

THIS VERIFICATION SHOULD BE SIGNED ONLY BY THE PRINCIPAL OR BY AN OFFICER OR AGENT THEREUNTO DULY AUTHORIZED

Form 19.—Customer's Verification (Duplicate).

Cash records.—Entries in the "trust ledger" (Form 20) are based upon trust memoranda tickets and are checked against corresponding entries made in the "journal" (Form 21). "Memoranda tickets" (Forms 22 and 22A) officially approved, authorize ledger and journal entries affecting departmental funds, but "credit" or "charge tickets" (Forms 23 and 24) are required where other departments are concerned. The stub portion of Form 24 is used by an officer who signs checks in payment for securities purchased, to check such payments with the deposit of the securities in the vault. Form 25 is the "reconcilement" or "proof sheet" of the department, prepared at the close of each day's business and delivered to the general bookkeeper of the company.

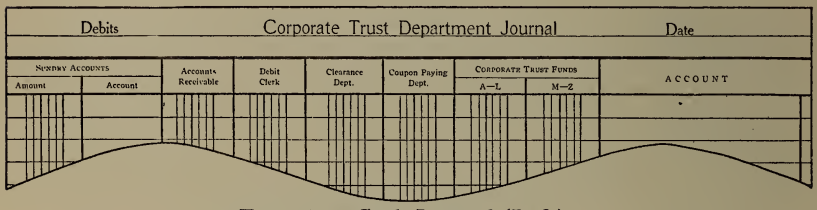
The "collection register" (Form 18, illustrated on page 64) is designed to relieve the cash journal of the detail involved in the collection of income on securities held by the department. The sheets comprising the register are in loose-



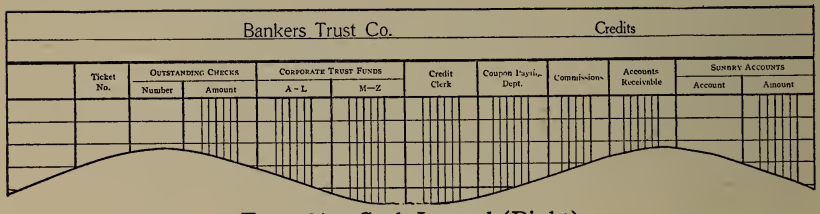
Form 20.—Cash Ledger.

leaf form and, except for dates and amount of income, are prepared from the stencils. Postings to the trust ledger are made directly from this register, a single entry recording the aggregate of each day's collections in the journal.

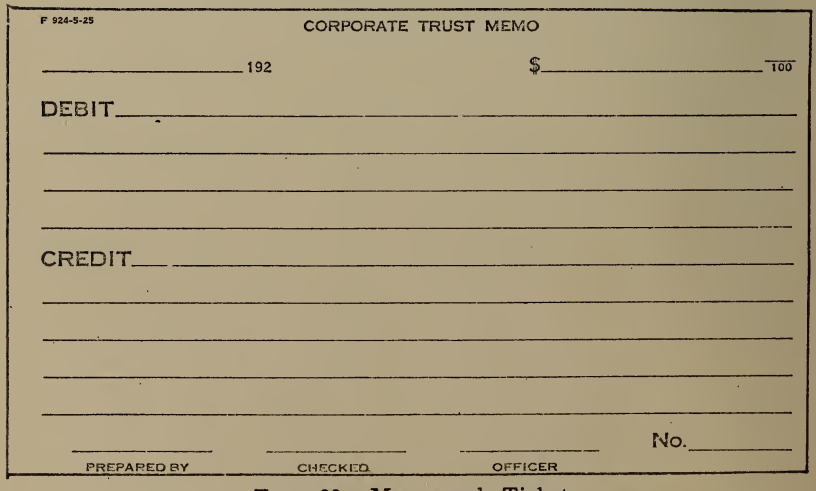
"Trust checks" (Form 26) are not in book form, but are bound in pads of one hundred, numbered consecutively. No check is signed by an officer unless the corresponding stub is presented with the check. This stub is detached, initialed by



Form 21.—Cash Journal (Left).



Form 21.—Cash Journal (Right).



Form 22.—Memoranda Ticket.

the signing officer, and delivered by him to the auditors who record the issuance of the check in a check register, whence it is marked off at the time the canceled check is returned through the clearings. The issuance of checks is recorded on the trust department journal through the departmental memoranda tickets.

F 922-5-25

CORPORATE TRUST – REDEMPTION MEMO

_____ 192 $_____ 100

DEBIT %

FOR _____ F. A. _____

AT _____ $_____

OTHER CHARGES _____

CREDIT

TRUST CHECKS								OTHER CREDITS			
CK. NO.	AMOUNT			CK. NO.	AMOUNT			ACCT. OR DEPT.	AMOUNT		
TOTAL CHECKS (OR CARRIED FORWARD)								TOTAL CREDITS (OR CARRIED FORWARD)			

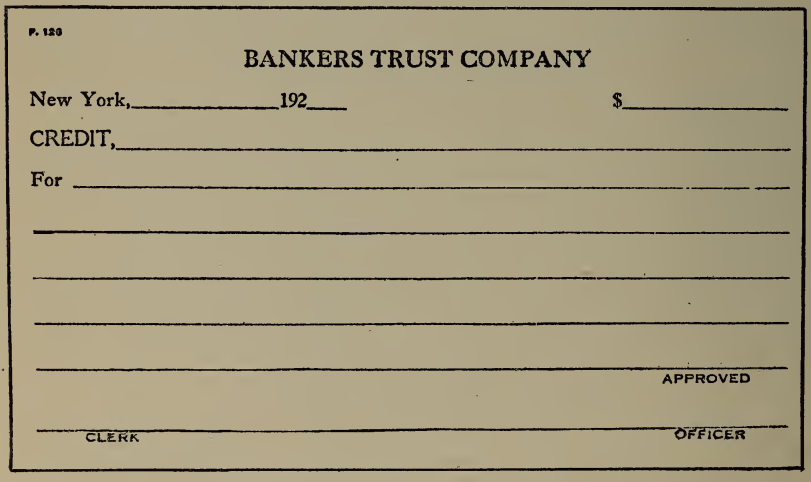
PREPARED BY _____ CHECKED _____ OFFICER _____ NO. _____

Form 22A.—Memoranda Ticket (for Redemptions).

Miscellaneous.—When any instrument of a formal character required of the trustee is presented to an officer for signature, it must be accompanied by a "documents executed slip" (Form 27). The slips are in book form, twelve to a page, similar to the certification blotter. The original of each forms the departmental record, while the carbon copy is retained by the signing official and delivered to the auditors.

"Tickler" cards (Form 28) are filed alphabetically, while the tabs at the top index them by date. From these cards monthly work sheets are prepared listing current maturities, trust requirements, and general items to be given attention by the department.

The "follow-up" or "pending card" (Form 29) was designed as a step toward insuring proper attention to matters requiring action at some future date. These cards are originated by members of the department, collected by a file clerk, and retained in the file room until the date specified thereon, when they are brought to the attention of the de-


P. 120

BANKERS TRUST COMPANY

New York,_____192____ $_____

CREDIT,_____

For _____

APPROVED

CLERK OFFICER

Form 23.—Credit Ticket.

P. 130

BANKERS TRUST COMPANY

New York,_____192____ $_____

CHARGE,_____

For _____

APPROVED

CLERK OFFICER

OFFICERS MEMO.

A/C_____

Broker_____

Amt. Ck $_____

Units_____

Form 24.—Charge Ticket.

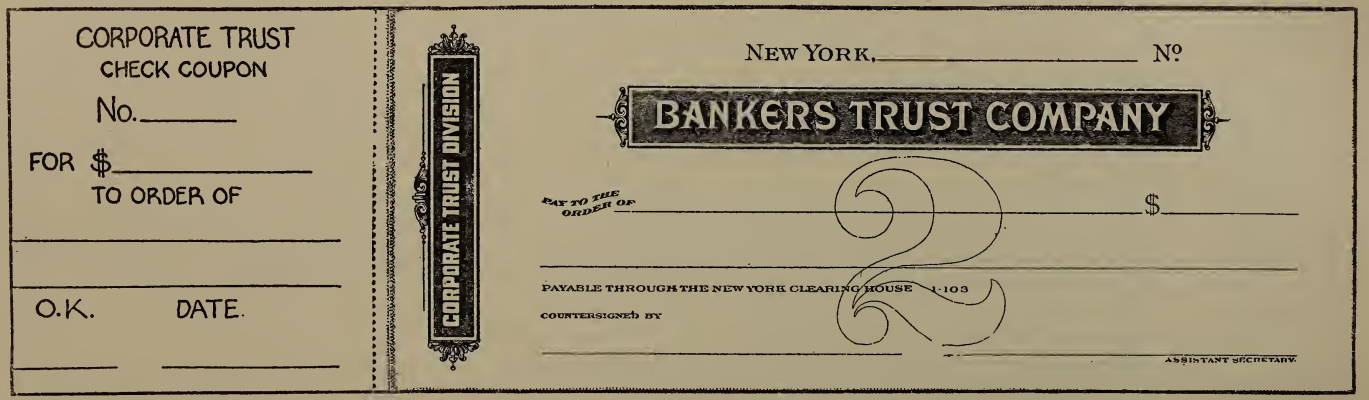
partment. The cards are filed in chronological order while any accompanying papers are detached and arranged alphabetically. If the pending matter is not cleared on the date originally fixed, the card is marked with a new date and returned to the file room.

CORPORATE TRUST DEPARTMENT—PROOF

For 192

DEBITS	FOLIO	ACCOUNT	CREDITS
		Debit Clerk	
		Credit Clerk	
		Loan Department	
		Mail Teller	
		Other Office Teller	
		Coupon Paying Dept	
		Paying Teller	
		Receiving Teller	
		Reorganization Department	
		Securities Department	
		Foreign Department	
		Clearence Dept.	
		Transit Department	
		Personal Trust Funds	
		Customers Securities Department	
		Coupon Collection Dept.	
		Note Tellers	
		Total Department Balances	
		Corporate Funds	
		Commissions	
		Accrued Interest Payable	
		Interest Paid	
		Outstanding Checks	
		Expense	
		Exchange	
		Income Tax	
		Accounts Receivable	
		Cash Collections	
		Due from Trust Depositories	
		Suspense Account	
		Federal Reserve Bank (120)	

Form 25.—Proof Sheet.



Form 26.—Trust Check.

TRUST DEPARTMENT

DOCUMENTS EXECUTED SLIP NO. 9600

TITLE OF TRUST

DESCRIPTION OF DOCUMENTS

PROCEEDS IF ANY, AND DISPOSITION

EXECUTED IN _____ COUNTERPARTS, _____ (DATE)

APPROVED BY COUNSEL

_____ BY _____ _____

VICE-PRESIDENT ASS'T SECRETARY

THIS SLIP TO BE INITIALED BY SIGNING OFFICERS AND DELIVERED TO AUDITOR.

Form 27.—Documents Executed Slip.

Jan Feb Mar Apr May June July Aug Sep Oct Nov Dec

YEAR

NO.

ACCOUNT

ITEM

FORM 875

Form 28.—Tickler Card.

"Vault index cards" (Form 30) comprise a record of the location of securities of all kinds in the vaults. This information must be given on vault deposit and withdrawal tickets.

While the records discussed in this chapter comprise a complete corporate trust accounting system, supplementary and special records are shown in other chapters.

MR. FOLLOW UP

ACCOUNT

DETAILS

F 99 3M 5-24

Form 29.—Pending Card.

F 557

VAULT INDEX

ACCOUNT

	VAULT	SAFE	SECTION	SHELF	ENV OR DRAWER
COLLATERAL					
SINKING FUND					
REFUNDED SECURITIES					
UNCERTIFIED BONDS					
CERTIFIED BONDS UNISSUED					
CANCELLED BONDS					
CANCELLED COUPONS					
SECURITIES HELD FOR CREMATION					

Form 30.—Vault Index.

Chapter V

THE CORPORATE MORTGAGE; PREAMBLE, GRANTING CLAUSE, AND FORM OF BOND

The typical mortgage.—In this and succeeding chapters the discussion of the form of a corporate mortgage will generally be based on a typical modern mortgage, hereafter referred to as the "Telephone" mortgage, the full text of which appears on pages 333 to 391. A careful reading of the portion of the "Telephone" mortgage under discussion in each chapter will probably assist the reader to a fuller understanding of the subject. There is, of course, no "standard" corporate mortgage—each instrument being drafted to fit the needs of a particular situation. However, there will be found a general similarity in form, and many common characteristics. As stated in the preface, the purpose of this discussion is to develop, chiefly, the points which are of greatest interest to those engaged in corporate trust administration. Consequently, some points of considerable legal importance, but of less practical interest, will receive only brief mention.

Parties and preamble.—The opening pages of a corporate mortgage are devoted to a number of formal statements, including (1) the date of the mortgage, which is not, as a rule, the date of actual execution; (2) the names of the mortgagor, the trustee, and other parties, if any, to the instrument; and (3) recitals as to the authority of the borrowing company, its purposes in creating the mortgage and the outstanding features of the bonds to be issued thereunder.

Form of bond.—Included in the recitals is the form of bond to be secured by the mortgage. Mr. Francis Lynde Stetson[1] has described a bond as follows:

"Primarily, a corporate bond contains a promise to pay a fixed sum at a time and place specified, and to pay interest

[1] Francis Lynde Stetson, "Some Legal Phases of Corporate Financing, Reorganization and Regulation," p. 16.

thereon at a rate, time, and place also specified. To identify the bonds as entitled to the benefits of the indenture, the bonds set forth the amount and title of the issue, and the parties and date of the indenture, and refer to the indenture for a statement of the security (if any), and the rights of the trustee and of the bondholders in respect of such security or under such indenture.

"There is a recital also that certification by the trustee under the indenture is requisite to the enforceability of the bond. This certification then becomes as essential to the validity of the bonds as to the security thereof by the indenture.

"Such a simple bond properly executed and attested is the stock upon which from time to time have been grafted various provisions intended to make the bonds attractive to purchasers or to protect the obligor. The number and variety of such provisions are many, limited only by the ingenuity of the borrower and the necessity of avoiding any contravention of the promise to pay."

Until the comparatively modern innovation of securing bonds of different series by the same instrument, the full text of the bond was set out in the mortgage. Unless issues of bonds in series are contemplated, this practice is still followed. In the newer mortgages, providing for more than one series, a skeleton form is given, with the statement that the bonds of each series shall substantially conform thereto, with such alterations and insertions as may be authorized pursuant to the mortgage.

Promptly upon receipt of the bonds for certification and delivery, the trustee should compare the text thereof with the form in the mortgage. No variation in substance should be permitted unless authorized by the mortgage. This comparison should include the form of coupon, trustee's certificate, and any authorized legends or endorsements, as well as the form of the bond itself.

In accordance with common practice, the "Telephone" mortgage sets forth, not only the form of the coupon bonds, but also the form of the coupons, the fully registered bonds and the trustee's certificate.

Granting clause.[2]—In the words of Mr. Roberts Walker:[3]

"The granting clauses, the *habendum* and the 'in trust, nevertheless' clause are fundamental. The granting clauses describe and convey the property to be mortgaged. The *habendum* completes the conveyance; to this point the document would be a deed or mortgage for the sole benefit of the trustee. Then follows the language that transforms the document into a deed of trust, defining the quality in which the trustee receives the property as grantee, but 'in trust, nevertheless' for the bondholders, thus making the bondholders the real beneficiaries of the transaction.

"In logical sequence, here should follow the passage commonly entitled 'Possession until default; Defeasance Clause,' wherein it is provided that the mortgagor shall continue in possession of all or some of the mortgaged property until default is made in paying the bonds or coupons or in living up to other terms of the mortgage; and also that upon final payment and performance of the bonds and mortgage, defeasance shall occur, that is, the mortgage shall be undone and the mortgagor shall retake the mortgaged estate as its sole absolute property."[4]

The mortgage may cover various classes of property—real estate, chattels, securities—as well as franchises, leases, patents, income from the mortgaged property, and so on. Many mortgages are intended to convey for the security of the bondholders, not only the property of the company, in existence at the date of the mortgage, but also all property which may come into the possession of the company, during the life of the mortgage. In such cases there is inserted in the granting clause, an "after-acquired property clause" setting forth the intention. Such clauses have resulted in some very interesting legal contests.

Following the granting clauses it is customary to insert a statement of excepted property and appropriate references to any prior encumbrances.

---

[2] In the "Telephone" mortgage set forth in the appendix the real property conveyed was described in detail in a separate instrument which was recorded with the mortgage. See Article VI, Section 3 (p. 362).

[3] Roberts Walker, "The Modern Corporate Mortgage."

[4] See Chapter XI, p. 159.

Article I — the bonds.[5]— In the first article of a modern mortgage usually appear the terms of the bonds to be issued thereunder, the method of execution, provisions as to denominations, registration and exchange thereof, the authorization of temporary bonds, and regulations for the issuance of duplicate bonds, in the event that bonds become mutilated, destroyed, lost, or stolen.

Authorized issues.—The total authorized amount of bonds is in some cases stated in the preamble and at times in this article. In the preamble of the "Telephone" mortgage it is recited that the immediate issue shall be $25,000,000 of Series "A" bonds, but the total authorized issue is not prescribed. Article II of the "Telephone" mortgage, referred to in the next chapter, provides that the company may issue bonds thereunder, without any fixed limit as to principal amount, but subject to certain restrictions. While such a mortgage is sometimes referred to as authorizing an "unlimited" issue, it is more accurate, in view of the express conditions, to refer to the issue as "indeterminate."

Series of bonds.—Indeterminate bond issues are of recent origin, but are becoming quite common in railroad and public utility borrowing. The reason is, perhaps, best illustrated by the picture of the economical country mother who, in buying a new suit of clothes for her growing boy, purchases one at least two sizes too large, so that it will not become too small before it has worn out. Think of her joy if it were possible to buy an adjustable suit. Corporations, particularly railroads and public utilities, like the small boy, have the growing habit. Before the days of the adjustable mortgage, their bankers and directors used to provide a mortgage authorizing a much larger issue than was at the moment required, but all too often the corporation outgrew the mortgage in a few years, and then had to undergo all the trouble and expense of securing a new and larger one.

Adjustability.—Experience has indicated the necessity of flexibility in respect of matters other than mere size. Nearly all of the old mortgages provided for a fixed rate of interest on the bonds to be issued. The fallacy of establishing a rigid

[5] See page 340 for Article I of the "Telephone" mortgage.

interest rate was clearly shown in the period of high money rates immediately following the War. Many a corporation found itself confronted with the necessity of borrowing, in an 8 per cent market, and under a mortgage authorizing only 5 per cent bonds.

There was a period of some years before the War when internationally known corporations could borrow to advantage in Europe; but the Englishman wished his bonds to be payable in sterling and the Frenchman in francs, and most corporations found that their mortgages authorized bonds payable only in dollars, and were consequently faced with much legal detail in furnishing bonds payable in the required currencies.

It is because of circumstances such as these that many mortgages of large corporations authorize the issue of bonds in series, each to be plainly designated, usually by letter or year of issue or maturity, so that it can easily be distinguished from other series under the same mortgage, and issuable on such terms as to interest rate, maturity, convertibility, currency, etc., as the directors of the company may authorize pursuant to the terms of the mortgage.

The form of the Series "A" coupon bond issued under the "Telephone Company" mortgage is reprinted, in full, below:

Fig. 5.—Form of Coupon Bond.

United States of America.

No. —— $———

THE TELEPHONE COMPANY OF AMERICA

Twenty-five year First and Refunding Mortgage 5% Sinking Fund Gold Bonds, Series "A"

Due October 1, 1950

The Telephone Company of America (hereinafter called the "Telephone Company"), a corporation of the Commonwealth of Pennsylvania, for value received, hereby promises to pay to bearer, or, if this bond be registered, to the registered holder hereof, on the first day of October, 1950, at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, —— Dollars in gold coin of the United States of America of or equivalent to the standard of weight and fineness existing on October 1, 1925, and to pay interest thereon from the date hereof at the rate of five per cent (5%) per annum, without deduction for any tax imposed by the Commonwealth of Pennsylvania upon this bond or upon the holder as a resident thereof, not in excess of four mills per annum on each dollar of the principal amount of this bond, such interest to be payable at such office or agency, in like gold coin, semiannually, on the first day of April and the first day of October

in each year until the payment of said principal sum, but only upon the presentation and surrender of the interest coupons hereto annexed as they severally mature.

This bond is one of a duly authorized issue of First and Refunding Mortgage Gold Bonds of the Telephone Company, issued and to be issued under, and all equally secured by an indenture of trust, dated October 1, 1925, duly executed and delivered by the Telephone Company to National Trust Company, a corporation of the State of New York, as Trustee, to which indenture reference is hereby made for a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds and of the Trustee in respect of such security, and the terms and conditions under which the bonds are issued and secured. As provided in said indenture, said bonds may be for various principal sums and are issuable in series, which different series may mature at different times, may bear interest at different rates, and may otherwise vary as in said indenture provided. Series "A" bonds, of which this is one, are known as the Twenty-five year First and Refunding Mortgage 5% Sinking Fund Gold Bonds, Series "A", of the Telephone Company, and are limited in the aggregate principal amount of $25,000,000, at any one time outstanding.

In case an event of default, as defined in the said indenture, shall occur, the principal of this bond may become and be declared due and payable in the manner and with the effect provided in said indenture.

This bond shall pass by delivery unless registered as to the principal thereof in the holder's name at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, such registry being noted on the bond by the agent, for such purpose, of the Telephone Company, after which no transfer shall be valid unless made at said office or agency by the registered holder in person or by his attorney duly authorized in writing, and similarly noted on the bond; but thereafter it may be discharged from registry by being transferred in like manner to bearer, and thereupon transferability by delivery shall be restored, and may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons hereto annexed, which shall continue to be payable to bearer and transferable by delivery merely, and the payment thereof to bearer shall fully discharge the Telephone Company in respect of the interest therein mentioned, whether or not this bond be registered.

The bonds with coupons of this Series "A" are issuable in denominations of $1,000, $500, and $100. The registered bonds without coupons of this Series "A" are issuable in denominations of $1,000, $5,000, and $10,000. Such bonds with coupons, and such registered bonds without coupons, and such bonds of the several denominations of either form, are interchangeable; and in and by said indenture it is covenanted that upon payment of charges and otherwise as provided therein, any such interchange may be made by the holder of any such bond or bonds upon presentation thereof for the purpose at the office or agency to be maintained by the Telephone Company in the aforesaid Borough of Manhattan, City of New York.

On any interest payment date this bond is subject to redemption at 105% of the principal amount thereof and accrued interest by operation of the sinking fund or at the option of the Telephone Company upon publication of notice of such redemption in the Borough of Manhattan, City of New York, as provided in said indenture, the first publication of said notice to be not less than sixty days prior to such redemption.

Said indenture provides for a semiannual payment by the Telephone Company to the Trustee of $205,000, as and for a sinking fund to be used in

acquiring bonds of Series "A" at not exceeding 105% of their principal amount and accrued interest.

No recourse shall be had for the payment of the principal of, or the interest upon, this bond, or for any claim based thereon, or in respect thereof, or of said indenture, against any incorporator, stockholder, officer, or director of the Telephone Company, either directly, or through the Telephone Company, or through a receiver or trustee, whether by virtue of any statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly released.

This bond shall not become valid or obligatory for any purpose until it shall have been authenticated by the execution of the certificate, hereon endorsed, by the Trustee under said indenture.

IN WITNESS WHEREOF, The Telephone Company of America has caused these presents to be signed by its President or Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, and coupons for said interest bearing the engraved facsimile signature of its Treasurer to be attached hereto in the City of New York.

Dated the first day of October, 1925.

THE TELEPHONE COMPANY OF AMERICA,

By ————————
Vice President

Attest:

————————
Assistant Secretary

Form of Interest Coupon.

No. —— $——

On the —— day of —— (unless the bond to which this coupon is attached shall have been called for previous redemption), The Telephone Company of America will pay to bearer, without deduction for any tax imposed by the Commonwealth of Pennsylvania upon the bond to which this coupon is attached, or upon the holder as a resident thereof, not in excess of four mills per annum on each dollar of the principal amount of such bond, at its office or agency in the Borough of Manhattan, City of New York, —— Dollars in gold coin of the United States, being six months' interest then due on its Twenty-five year First and Refunding Mortgage 5% Sinking Fund Gold Bond No. ——, Series "A."

————
Treasurer.

(BACK OF BOND)

Form of Trustee's Certificate.

This bond is one of the bonds, of the series designated therein, described in the within-mentioned indenture.

NATIONAL TRUST COMPANY, Trustee,

By————————
Assistant Secretary.

Legend as to Stamp Tax

The stamp tax imposed by act of Congress for and in respect of this bond has been paid by stamps affixed to the indenture under which this bond is issued, and duly canceled.

Legend on $1,000 Bonds as to Exchangeability for Other Denominations.

The holder of this bond may, at his option, on surrender and cancellation and on payment of charges, as provided in the Indenture, receive in exchange, coupon bonds of the same issue and series for an amount aggregating $1,000 in denominations of $500 or $100, of numbers not contemporaneously outstanding.

Form for Registration of Principal.

NOTICE: NO WRITING ON THIS BOND EXCEPT BY AN OFFICER OR AGENT OF THE COMPANY

Date of Registration	*Name of Registered Owner*	*Signature of Registrar*

Filing Back.

THE TELEPHONE COMPANY
OF AMERICA

—— $1,000 ——

Twenty-five Year
First and Refunding
Mortgage 5% Gold Bonds
Series "A"

Due October 1, 1950.

Interest Payable
April 1 and October 1.

Principal and Interest
payable in the
Borough of Manhattan
City of New York.

In the case of a mortgage authorizing the issuance of bonds in series, the first article will usually set forth in detail the terms of the initial series, and provide that subsequent series shall be issued upon such terms, within the limits prescribed by the mortgage, as may be determined by the directors of the company, by appropriate resolution, a certified copy of which should be filed with the trustee with the first application for issue of bonds of the new series. In some cases the mortgage provides that the terms of each new series shall be set forth in a supplemental indenture. This method is more formal, and some lawyers consider it better practice.

Execution of bonds.—Bonds are often executed by the corporation well in advance of issuance, and to meet the contingency of an officer severing his connection with the company prior to the date of actual issue of bonds signed by him, provision is nearly always made that bonds so signed may be delivered as valid obligations of the company, and similarly, provision is made that bonds may be signed by officers of the company at the date of issue, although such persons may not have been officers of the company at the nominal date of the bonds. At this point it is also usual to authorize the execution of the coupons by the facsimile signature of the present or any future treasurer of the company. The reasons for these provisions are obvious.

It is customary also to provide that all coupon bonds, irrespective of the date of issue, shall be dated as of the date of the mortgage, and that all matured coupons at the time of issue shall be detached by the trustee and canceled. If the mortgage authorizes fully registered bonds, such bonds are usually dated as of the interest date next preceding the date of issue, unless issued on an interest date when the bonds are dated as of the date of issue.

Trustee's certificate.—That the trustee's authentication or "certification" of a bond is essential to its validity is recited not only in the bond itself (see page 81), but in the mortgage as well. Authentication by the trustee *identifies* the bonds regularly issued under the mortgage. Unfortunately, investors have sometimes assumed that the trustee's signature on a bond implied some guaranty of value. The mere reading of the trustee's certificate (which generally takes the form set forth on page 81) should correct any such impression.

Registration, transfer, and exchange.[6]—Practically all bond issues provide for registration as to principal, and many long-term bonds for full registration. Registration "as to principal only" is endorsed upon the coupon bonds, in a space provided for that purpose as indicated on page 82. Such registration does not affect the interest and the coupons continue to be payable to bearer. The owner's name is inscribed

[6] The operation of transfer and registration of bonds is discussed in Chapter XVIII. See page 342 for the provisions of the "Telephone" mortgage.

on the bond and entered upon the registration record by the company or its authorized bond registrar, usually the institution which acts as trustee; in fact, many mortgages designate the trustee as bond registrar. Subsequent transfers are made on the books of the company and endorsed upon the bond by the registrar upon presentation to it of the bond accompanied by a proper assignment executed by the registered owner. Registered bonds of this type may be restored to their original bearer form by transfer to "bearer" instead of to a new registered holder, and may again, from time to time, be registered and retransferred to bearer.

Full registration, that is, registration of both principal and interest, is accomplished in a different manner. Some of the older mortgages provide that in case of full registration the coupons shall be detached and canceled, and the bond endorsed as in the case of registration as to principal. Under most mortgages, which provide for full registration, however, separate forms of fully registered bonds are authorized, in specified denominations, and upon surrender of a block of coupon bonds for full registration, the coupon bonds are canceled and in lieu thereof fully registered bonds in the name of the new owner are certified and delivered. As interest falls due, checks for the interest on fully registered bonds are mailed to the registered holder by the company or its agent.

In many cases fully registered bonds carry a legend to the effect that they have been issued against the cancellation of coupon bonds of specified serial numbers and denomination and that the specified coupon bonds will be reissued, on application of the registered holder and on surrender and cancellation of the fully registered bond. This is considered good practice and is a listing requirement of the New York Stock Exchange as to registered bonds which are interchangeable with coupon bonds.[7]

Exchange of denominations.—Many mortgages which provide for coupon bonds in denominations other than $1,000 (usually $500 and $100) authorize the exchange of one denomination for another. Some mortgages restrict this privilege to the consolidation of small denominations into larger, while others permit a full exchange either way. Similarly,

[7] See listing requirements of New York Stock Exchange, page 441.

in the case of fully registered bonds of specified denominations, provision is made that bonds of one denomination may be exchanged for other denominations. In the case of fully registered bonds, the usual denominations are $1,000, $5,000, and $10,000, although sometimes blank certificates are used which may be issued for any multiple of $1,000. Fully registered bonds of less than $1,000 are rarely authorized.

Charges for registration and exchange.— Mortgages which authorize fully registered bonds and the exchange of denominations usually provide that the company may charge the bondholder for any registration, transfer, or exchange involving the issue of a new bond, a specified sum (seldom in excess of $2) for each new bond issued, plus reimbursement for any tax imposed on the transaction.

Who is deemed owner.—For the protection of the company and the trustee, the statement that the company and the trustee may treat the bearer of any unregistered coupon bond, and of any coupon, and the registered holder of any registered bond, as the absolute owner thereof, and shall not be affected by any notice to the contrary, is practically always made in the mortgage. While this provision is inserted for the protection of the company and the trustee, too much reliance should not be placed upon it, as there may be circumstances in which neither the company nor the trustee could legally disregard other notice.

Duplicate bonds.—The volume of securities lost and stolen during the past few years is a matter of concern to trustees which are called upon to certify duplicates. Practically all corporate mortgages make provision for replacing bonds which have been mutilated, destroyed, or lost. Section 7 of Article I of the "Telephone" mortgage is typical of the requirements for the issuance of duplicates. Some recent mortgages specifically permit the issuance of duplicates of stolen bonds. Where specific authority is lacking, the trustee will do well to secure counsel's opinion as to whether the word "lost," as used in the mortgage, embraces the meaning of the word "stolen."

Immediately upon receiving a report of the loss or theft of securities the trustee should make appropriate notation in

the different accounts pertaining to the securities, such as exchange, bond registration, coupon paying records, etc., and should also record the notice in a central "stop" file. As securities are recovered or duplicates issued supplemental notations should be made on the same records.

It is hardly safe to generalize on the subject of the issuance of duplicate bonds, because in each case the surrounding circumstances have an important bearing, but the trustee should proceed with caution and, before acting upon any application for the issuance of a duplicate of a bond reported lost, stolen, or destroyed, should carefully consider these questions:

1. Does the mortgage permit the issuance of a duplicate?
2. Has acceptable indemnity (usually for *(a)* twice the face amount of the bond plus *(b)* the amount of interest to maturity) been furnished the company and the trustee?
3. Has the applicant established his ownership and filed satisfactory proof of loss, theft, or destruction?
4. Has the mortgagor duly authorized the issuance of the duplicate?
5. Has a thorough examination been made of the company's and the trustee's records and securities for any trace of the missing bond or the coupons pertaining thereto?
6. Have the paying agents, sinking fund agents, and the registrar, if other than the trustee, been apprised of the loss, and have they completed the examination of their records and securities?
7. Have counsel examined the application and approved the issuance of a duplicate?

The payment of missing bonds or coupons at maturity involves practically the same questions as the issuance of a duplicate. The circumstances surrounding each case will, of course, determine the extent of the trustee's investigation.

It is advisable for the trustee to require at least six months, preferably twelve months, to elapse before taking final action on any such applications. At the end of that period, the investigation should be brought down to date and the case again examined from all angles.

It is desirable from the standpoint of a trustee that duplicate bonds and all coupons attached thereto be identified by some mark which will distinguish them from the original bonds. However, before marking duplicate bonds, the trus-

tee should ascertain the requirements of any stock exchange on which the bonds are listed.

A special committee of the Corporate Fiduciaries Association of New York City rendered a report on the subject of duplicate securities and submitted for the benefit of its members forms of letters to be used by trustees in acknowledging receipt of notice of loss or theft of securities. In such acknowledgment, notice is served on the bondholder or his representative as follows:

"Your attention is directed to the fact that these securities are or may be negotiable and enforceable in the hands of an innocent holder for value. For this reason, we are regretfully constrained to advise that we can assume no responsibility in respect of any payment, exchange, or transfer made to or at the request of any holder. . . .

"Notice of the alleged loss should first be filed with the debtor company at —— and its consent to the issuance of duplicate securities should be lodged with us, and our practice is to require, in substantially the form enclosed *(a)* proof of loss, theft, or destruction, and *(b)* a bond of indemnity issued by one of the standard surety companies in an amount equal to: (1) twice the par value of the securities; (2) interest to maturity. . . ."

It is advisable in all cases to have the bond of indemnity executed by a reputable surety company, in form approved by the trustee's counsel and so drafted that the trustee will receive all possible protection.

Certainly, in matters of this kind, where one misstep may result in serious loss, the trustee is fully justified in pressing its demands. At best, the certification of a duplicate bond, or the payment of securities alleged to have been lost, stolen, or destroyed, means an increase in *contingent* liabilities which the trustee should incur only when protected to the fullest extent possible.

Certificates of indebtedness.—The courts of New York[8] have held that, where the provisions of a mortgage do not

[8] The outstanding New York case is Switzerland General Insurance Company of Zurich *v.* New York Central and Hudson River Railroad Company, 152 N. Y. App. Div. 70.

entitle the owner of a lost bond to secure a duplicate bond, he may require the issuance by the debtor corporation of a "certificate of indebtedness" conforming to the lost bond in principal amount, rate of interest, and so on, but containing a provision that in case the lost bond is found in the possession of one entitled to enforce it the certificate of indebtedness shall be unenforceable and void. Before certifying a certificate of indebtedness against a lost bond, a trustee should receive proof of loss and adequate indemnity, and generally it should follow the procedure outlined for the issuance of a duplicate bond.

Temporary bonds and interim certificates.— To assure a maximum of protection against forgery most permanent or "definitive" bonds are elaborately engraved or lithographed, in fact, the New York Stock Exchange insists that as a prerequisite to listing, such securities be engraved. Many corporations which do not contemplate an immediate listing, anticipate the possibilities of future requirements to the extent of preparing their securities in form approved by the exchanges of the leading security markets. But the engraving of an issue of some thousands of bonds and appurtenant coupons is a slow process, and pending such preparation it is often necessary for the borrowing corporation to arrange for some substitute acceptable to investors.

This accounts for the use of temporary bonds and interim certificates. Temporary bonds follow the general form provided in the mortgage, and are subject to the same conditions as the definitive bonds for which they will, at a later date, be exchanged. As a rule, they carry no coupons, although a coupon or coupons may be attached to cover interest which will mature prior to the probable date of exchange for definitive bonds. Temporary bonds are usually printed on engraved or lithographed forms, are plainly marked "temporary," and, when interest coupons are not attached, provide that interest payments shall be endorsed on the bond.

Interim certificates and interim receipts serve the same purpose in the security market as temporary bonds. However, their form is quite different and their issue is not controlled by the mortgage, but usually is provided for in a separate agreement or letter of instructions. Issued on behalf of the

borrowing corporation or an underwriting syndicate, in many cases prior to the execution of the mortgage, they usually entitle the holder to receive the actual security when, as, and if issued, or, failing delivery thereof within a specified time, to receive a cash refund based on the subscription price of the bonds. Banks and trust companies frequently act as agents for the issuance of interim certificates.[9] The practice of the underwriting house issuing its own interim receipts, where the underwriting house retains the proceeds of the securities sold, is not sound. The proceeds thus held may, in bankruptcy or insolvency proceedings, be held to have become mingled with the other assets of the underwriting house, thus occasioning losses to the holders of the interim receipts. Certain underwriting houses make a separate trust deposit of such proceeds with a banking institution, the underwriting house then issuing its interim receipts, registered by the banking institution. This is a sound and desirable practice, where it results in a complete segregation of these proceeds for the sole protection of the holders of the interim receipts. As the investing public comes to better understand the principles and risks involved, it is likely that the receipts issued or registered by fiduciary institutions will be demanded.

Exchange of temporary for definitive bonds.—The delivery of definitive bonds against the surrender of interim receipts or temporary bonds is a phase of the trustee's activities which requires a system calculated to provide speed with a careful check of the securities received and delivered so as to prevent any overissue. As most large issues are marketed in temporary form and later exchanged, this feature of the trustee's activities results in a large turnover of securities.

Issuance before recording.—Most mortgages permit bonds to be certified and delivered by the trustee in advance of the recording of the mortgage. This is due to the time required to place a mortgage of record in a number of jurisdictions. While the authors know of no loss to bondholders because of this provision, the authority to deliver bonds before recording the mortgage is justified only on the score of practicability. Bankers underwriting an issue are willing to extend the privilege only to companies of unquestioned standing.

---

[9] See Chapter XIII, page 170.

Chapter VI

ISSUE OF BONDS UNDER CORPORATE MORTGAGES

Trustee's responsibility in certifying.—The provisions of a corporate mortgage which control the issuance of bonds are of special importance to the trustee, whose duty it is to see that issues for specified purposes, as well as the total issue, are kept within prescribed limits. Corporate mortgages frequently contain provisions limiting the issuance of bonds under the mortgage not only in the aggregate amount but in the amount that may be used for specified purposes. For example, the total issue for which a mortgage provides—the so-called "authorized" amount—may be $5,000,000, but not more than $1,000,000 may be used for retiring underlying bonds.[1] The trustee, then, must certify not more than $1,000,000 of bonds for refunding purposes. The research sheet (see page 100) is useful in checking the limitation just discussed and other points which the trustee should watch when called upon to certify bonds.

In the simpler forms of instruments one paragraph, or even a single sentence, may suffice to express the bond issue provisions. The purpose, in such instances, is merely to provide immediate cash for a known requirement, and generally no restrictions are imposed other than a limitation on the total

[1] A variety of terms are applied to mortgages to indicate the relationship of the amount of bonds issued to the "authorized" issue. While these terms are not altogether standard, the following conform to general usage: When bonds are issued to the extent authorized, the mortgage is sometimes referred to as a "closed" mortgage. If the "authorized" amount is specified in the mortgage, but bond issues have not reached the authorized limit, we speak of the mortgage as a "limited open end" mortgage. In cases where the mortgage sets no limit upon the amount of bonds which may be issued, or the authorized amount cannot be determined from the mortgage itself—being dependent upon some other factor, such as the amount of outstanding stock—we refer to it as an "open" or "indeterminate" mortgage. A company may also "close" a mortgage by making a formal agreement to issue no more bonds thereunder. A covenant to this effect is often contained in a subsequent mortgage.

issue. Ordinarily, in such cases, the bonds are issuable immediately upon execution of the indenture, or, from time to time thereafter, upon the written order of designated officers of the company, or in accordance with resolutions of its board of directors.

Three principal purposes of bond issue.—The more elaborate regulations in respect to bond issues have come from a realization of the advisability of providing for future financing by the borrowing corporation, whose requirements cannot be forecast at the time the mortgage is made. As a result, the sections of a mortgage placed under the heading, "Issue of Bonds,"[2] are frequently drawn to provide for three main objects:

1. The initial issue for immediate needs.
2. Issuance to refund underlying bonds.
3. Issuance for permanent additions and betterments.[3]

The initial issue.—Bonds for immediate requirements are usually deliverable upon a simple order of designated officers of the company or pursuant to resolutions of its board of directors. An initial bond issue will probably have as its purpose one or more of the following:

Reimbursement for capital expenditures actually made by the company prior to the date of the mortgage. In such a case the trustee usually has no obligation other than to deliver the bonds; but the section authorizing the issue of bonds against subsequent capital expenditures will then provide that only expenditures made after the date of the mortgage may be the basis of additional bond issues.

Acquisition of property included in the granting clauses of the mortgage. Such an issue requires a so-called "clearing transaction" at the time of the execution of the mortgage. Representatives of the company, its bankers, the trustee, and the seller of the property meet and go through a "simultaneous" procedure, of which the following is an example:

1. The company receives a deed from the seller of the property.

---

[2] This reference is to the text of the "Telephone" mortgage, page 345.

[3] Sometimes the term "capital expenditures" is used. The mortgage should always clearly state what items are admissible under this general heading.

2. The company and the trustee execute the mortgage.
3. The trustee delivers the bonds (previously signed and certified) to the company.
4. The company delivers the bonds to its bankers, against payment.
5. The company pays the seller for the property.
6. The deed, together with the mortgage, is delivered to a joint representative of the interested parties to be promptly recorded.

The mortgage must, of course, contain the customary provision permitting delivery of bonds in advance of actual recording.

Acquisition of securities to be pledged with the trustee. This may involve a "clearing transaction" similar to that described for the acquisition of real property. The question of the control of pledged securities is discussed in Chapter IX.

Pending construction.—At times a mortgage contemplates financing, through the proceeds of the initial issue, the construction of a new factory, power-house, line of railway, or some other project. In that event, the mortgage will usually provide that the cash proceeds of the bonds shall be deposited with the trustee for the purpose of paying for the construction as it progresses. The requirements for the withdrawal of such cash are similar to those prescribed for the issue of bonds against capital expenditures. (See page 93.)

Refunding.—Several methods are used to accomplish the refunding of underlying obligations. In case the mortgage authorizes the issuance of bonds against underlying obligations before the maturity of the latter, the company may independently acquire the underlying obligations and deliver them to the trustee with its formal application for the issue of additional refunding bonds. Issues for the purpose of redeeming underlying bonds are not quite so simple, because the refunding mortgage generally requires the trustee to receive evidence that the proposed redemption will be accomplished. This will probably include evidence that the company has complied with the provisions of the underlying mortgage as to publication and mailing of the redemption notice and that it has provided the cash necessary to effect the redemption. Ordinarily these funds are secured through the sale of refunding

bonds and the cash is held in trust by the refunding trustee, until deposit with the underlying trustee is necessary to accomplish the redemption. The deposit is then made by the refunding trustee, in trust, for the express purpose of the redemption. The refunding of underlying bonds at maturity may consist simply of the delivery of the new bonds upon receipt by the trustee of the canceled underlying bonds accompanied by an appropriate application of the company under the provisions of the refunding mortgage; or the operation may involve the issuance of the refunding bonds upon deposit with the trustee of cash sufficient to pay the maturing underlying bonds, this cash to be released as the matured bonds are received. Canceled underlying bonds received by a trustee as a result of their payment or redemption constitute *prima facie* evidence of a reduction of the underlying lien. Further than this their value is problematical. As a rule, uncanceled underlying bonds so received are held alive and, generally speaking, such bonds are enforceable in case of default, thereby entitling the trustee to a proportionate share in the underlying lien. As to coupons from underlying bonds deposited with the underlying trustee, it is customary to provide that they shall not be enforceable against the company unless a default exists. It is sometimes provided that underlying bonds shall be stamped by the trustee "Not negotiable, held by the trustee under —— mortgage," or words to that effect.

The trustee of a refunding mortgage is practically always authorized, when it has acquired all bonds of an underlying issue, to cancel the entire issue and secure from the underlying trustee an instrument of satisfaction and release. However, if there is an intervening lien, such underlying issue will be held by the refunding trustee, until the intervening lien has been satisfied.

Issues for permanent additions and betterments.—At the time the mortgage is drawn, the company will usually endeavor to make these provisions as broad as possible, while the bankers will insist upon such restrictions as in their judgment are necessary to protect the bondholders. The careful trustee, in examining such a mortgage, prior to execution, will satisfy itself, first, that the necessarily complicated provisions are entirely clear, so that no embarrassing questions

of interpretation will arise during the administration of the trust, and, second, that the provisions and restrictions, as stated, are practicable. Counsel for the trustee will, of course, pass upon the legal questions involved.

General restrictions.—Perhaps the best way to give a general idea of the character of restrictions which mortgages generally place against the issuance of bonds for refunding purposes and for capital expenditures is to cite a few typical provisions:

No default.—Bonds may not be issued while a default exists.

Percentage of cost.—Bonds are usually issuable only to an amount equal to a specified percentage, say, 75 per cent or 80 per cent, of the actual cost or fair value to the company, whichever shall be lower, of the property or betterments. The percentage restriction, however, is not usually applied to refunding operations.

Character of additions.—The mortgagor is usually required to certify that the expenditures are properly chargeable to capital, that they have been made on property subject to the lien of the mortgage, and that such additions and betterments are necessary and advantageous to the business of the company.

New property.—If new property is involved, there is usually a further requirement that such property be subjected to the lien of the mortgage simultaneously with the issuance of the bonds. There may also be special restrictions on the character of property which may be made the basis of bond issue, for instance, a railroad mortgage may require new property to connect with the existing right of way, or a public utility mortgage may restrict the company's pledge of property as a basis for bond issues to property required in connection with the company's business and located in territory served by the company or adjacent thereto.

Practically every mortgage of this kind requires that the property which is the basis of the application shall be free of any lien superior to the lien of the mortgage under which the bonds are issuable, or, if there are any prior liens, that adequate provision be made to take up such liens.

Earnings.—Provisions as to net earnings, as a prerequisite to bond issue, are contained in many mortgages. A typical requirement is that the net earnings for 12 consecutive months within 15 months next preceding the application shall equal twice (the ratio varies from 1½ to 2 times) the total interest requirements for the same period on all obligations with a lien equal, or prior, to that of the mortgage, and including the interest on the bonds applied for.

Evidence of compliance with restrictions.—Every mortgage will specify certain documents which shall be filed with the trustee on each application for the issue of bonds, as evidence of compliance by the mortgagor with the requirements of its mortgage. The following outline of the documents comprising a typical bond application illustrates the general practice:

1. *Resolution.*—Practically every mortgage requires that the application shall include a certified copy of resolutions passed by the directors of the mortgagor, authorizing the application and generally stating the purpose of the proposed bond issue.

2. *Order.*—Most mortgages require a written order by specified officers directing the delivery of bonds.

3. *Certificates.*—The different mortgages present a rather wide range in their requirements as to certificates covering the detail of the basis of the application. Nearly every mortgage will require a certificate as to the facts by one or more designated officers of the company, for instance, by the president or a vice president *and* by the treasurer or chief accounting officer. Under many mortgages it is required that such certificates take the form of affidavits by the subscribing officers. The certificates of disinterested engineers or other experts selected by the company and approved by the trustee are frequently required in support of the statements by the company in its application. Ordinarily, it is required that such affidavits or certificates shall describe the betterments and additions in reasonable detail, and shall certify to their cost or value, and also to their utility or necessity with respect to the mortgagor's business. A good rule for a trustee to follow on the question of "reasonable detail" is to insist upon a description sufficiently broad to enable the trustee, in case

of default and foreclosure, readily to identify the property subject to its mortgage.

4. *Opinion of counsel.*—It is usual to require an opinion of counsel that the expenditures certified in the application are of a nature authorized by the mortgage, that the company has good title to the new property, if any, covered by the application, and that the property or betterments and improvements are, or, upon the issue of the bonds or payment of cash representing bond proceeds, will become subject to the lien of the mortgage, without prior lien, or, if a prior lien exists upon any such property, that adequate provision has been made to discharge such prior lien. Some mortgages require the opinion of independent counsel, but this is the exception rather than the rule. In many instances a supplemental indenture is necessary to extend the lien of the mortgage to new property, and it is usual for a mortgage to require the opinion to state whether a supplemental indenture is necessary, and, if necessary, to approve the form thereof and to specify the proper recording.

5. *Earnings statement.*—Any mortgage which requires a specified ratio between net earnings and interest payable will provide for an earnings statement as a part of a bond application. The general practice is to permit the certification of such a statement by the treasurer or an assistant treasurer of the company, but some mortgages will require certification by public accountants selected by the company and approved by the trustee.

6. *Balance sheet.*—Some mortgages, particularly those which contain a covenant with respect to net quick assets, will require a balance sheet. Here, again, the general rule is for certification by the treasurer or assistant treasurer of the company, although in exceptional cases the requirement is for a public accountant's certificate.

In addition to the requirements discussed above, some mortgages contain one or more general restrictions on the issue of bonds, such as a provision that the total amount of the mortgagor's outstanding bonded debt shall never exceed the amount of its outstanding capital stock. The first paragraph of Section 1, Article II, of the "Telephone" mortgage (page 345) is an example of such a provision.

Issuance of bonds against cash.—Many mortgages permit the company to take advantage of favorable bond markets by providing that the trustee may deliver bonds against the deposit of cash equal to the principal of the bonds so delivered. As a rule, a limit is placed on the amount of cash representing the proceeds of such bonds which may be held under the mortgage at one time. The restriction is to obviate the possibility of the company relying on its judgment of conditions in the bond market to the extent of selling in advance an unreasonably large block of its bonds. The company, of course, is required to pay the full interest rate on the bonds which it sells, while the cash proceeds, so long as they remain under the mortgage, must necessarily return a much smaller yield. The loss from a transaction of this kind carried to extreme might easily have a serious effect on the net earnings of the company.

It is just this situation which produces a rather serious problem for the trustee. The company, considering on the one hand, the rate of interest which it is paying on its bonds, say 6 per cent, and, on the other hand, the rate of interest it is receiving from the trustee, usually from 2 per cent to 3 per cent, on some millions of dollars of proceeds of bonds awaiting withdrawal pursuant to the mortgage, often, and quite naturally, considers ways of investing the funds more profitably. As a consequence, it comes to the trustee with various proposals for the temporary investment of the fund. Unless the mortgage makes express provision for this situation, any such investment is at the risk of the trustee and may constitute a breach of trust. Furthermore, the intent of the mortgage is that there shall be one hundred cents on the dollar of principal to cover the future capital expenditures of the company or to protect the bondholders in the event of a prior default by the company, and the bondholders are not directly interested in the income produced by the fund. Consequently, the trustee should refuse to make such investment unless authorized by the mortgage or unless extraordinary conditions exist.

The tendency in drawing mortgages, particularly since the World War, is to authorize the investment of such funds, usually in the short-term obligations of the Federal government. In cases where specific authority is contained in the

mortgage, the trustee is protected in making investments of this type which conform to the requirements of the mortgage. In drawing such provisions in a mortgage, however, it is not considered good policy to widen the field beyond the short-term Federal obligations. There are many other safe investments which might be considered acceptable, such as Liberty Loan bonds and the stronger municipal issues; but the prices of all except the very short-term investments fluctuate with the major swings of the money market. Consequently, although the long-term investment may be exactly as sound on the day the funds are required as on the day it was purchased, the difference in market price may, particularly in the case of a large fund, result in serious loss to the trust estate. A very good practice, even in the case of authorized investments in short-term Federal obligations, is to purchase maturities, conforming as nearly as may be with a budget prepared by the company of the anticipated dates and amounts of its expenditures.

Another perplexing question is involved in the request, at times presented to the trustee under a mortgage authorizing the issue of bonds against cash, to deposit all or a part of the cash fund with other depositaries. Here, again, the provisions of the mortgage are, or at least should be, controlling. If specific authority is given, the trustee is protected in acting in accordance therewith. If the mortgage does not contain authority some degree of risk attaches to the trustee, even though careful selection of depositaries may render this risk remote.

Authority from public body.—The Interstate Commerce Commission has jurisdiction over practically all capital issues by interstate railroads, and the various states have established commissions or other public bodies to control security issues by special classes of corporations, or, in some cases, all corporations, within their respective jurisdictions. Some mortgages require that all necessary consents or approvals from any public body having jurisdiction over a bond issue shall form a part of the company's application. But irrespective of the provisions of a mortgage the trustee, for its own protection, should receive duly certified copies of all such consents which counsel may advise are required by law.

Receipts and counsel's approval.—It is of the utmost importance that in the case of each bond issue the trustee shall take a formal receipt completely describing, by title, maturity, denomination, serial numbers, and coupons attached, the delivery of bonds. Each receipt should be carefully filed, preferably with the documents constituting the corresponding bond issue application.

The trustee's responsibility for any unauthorized or overissue of bonds is so clear that good practice dictates the invariable rule that each bond application, in addition to careful examination by the trust department, should be submitted to counsel for approval, and counsel's approving opinion should also be filed with the documents comprising the application.

Scope of the trustee's examination.—The research sheet, illustrated in Form 31, is used as a guide for the corporate trust department in checking bond applications. It presents a rather complete list of the matters which the trustee must consider prior to approving an application for the issuance of bonds.

The calculation in the heading necessitates checking the amounts of bonds authorized and issued, not only under the mortgage as whole but under the section or sections involved in the application. An overissue under a particular section would be only less serious than an overissue in the total authorized amount.

Most of the items on the research sheet have already been discussed. Regarding the present U. S. documentary tax of 5c per $100 of bonds issued, which must be paid by the corporation, it is good practice, approved by the Treasury Department, to cancel and affix the proper amount of stamps to an original counterpart of the mortgage. It is then necessary that an appropriate endorsement appear on the bonds reading somewhat as follows:

"Federal stamp tax imposed on the issue hereof has been paid, stamps having been attached to the Indenture herein mentioned and canceled."

If, at the time of issue of temporary bonds, one or more interest payment dates have elapsed, it is proper to stamp such bonds with a notation reading:

"Interest on this bond accrues from ——"

inserting in the blank space the interest payment date, next preceding the date of issue.

The questions regarding consents (other than by public bodies, previously discussed) pertain only to a few mortgages, usually those on the property of reorganized companies. Such mortgages sometimes require the consent of certain

F. 1111-3-24

RESEARCH SHEET

Date _____ Trust _____

Issue of $ _____ of _____ under Article _____ Section _____

Authorized Issue under Indenture $ _____ under this Section $ _____

Total Issue to Date, under Indenture (including this Issue.) $ _____ " " $ _____

Balance Unissued under Indenture $ _____ " $ _____

		REMARKS
Indenture Recorded?		
Mortgage Tax Paid?		
U. S. Documentary Tax Paid?		
Tax Legend Required on Bonds?		
Approval Required by Public Bodies?		
Certified Copies of Approvals Filed?		
Interest Notation Required on Bonds?		
Past Due Coupons Detached & Cancelled? (Note disposition)		
Consents Required of:		
Bondholders or Finance Committees?		
Bankers? Other Trustee?		
Signatures on Bonds Verified?		
Collateral or Cash to be Received?		
Approval by Counsel?		
Are mathematical calculations on application correct? All figuring re calculations to appear on back hereof.		
Credit Balance Carried Forward (Cash or Expenditures)		

Prepared by _____ Approved by _____

Form 31.—Research Sheet.

committees, or perhaps the company's bankers. In other cases, the trustee of some junior mortgage may have served notice that a covenant in the junior mortgage restricts further bond issues under the senior mortgage or requires that consent to any such issue be secured from the junior trustee.

Upon completion, the research sheet is signed by a member of the department, attached to the papers comprising the bond issue application and the entire file is submitted to an officer for approval. When approved the papers are placed in the document folder.

Chapter VII

COVENANTS OF THE MORTGAGOR

Reason for covenants.—At the time a mortgage is drafted the sections concerning the covenants or agreements of the mortgagor receive most deliberate consideration on the part of the bankers who have purchased the bonds. It is obvious that no company would gratuitously insert burdensome provisions in its mortgage; hence, it may be assumed that the covenants therein expressed are the result of the bankers' requirements in this respect. The provisions contained in the article entitled, "Covenants of the Company."[1] are, consequently, a fairly reliable barometer of the strength of the mortgagor as judged by the bankers at the time of the execution of the mortgage. Strict covenants are intended to protect the bondholders against existing or potential weaknesses in the company's assets, financial position, or organization. On the other hand, lenient provisions imply that the company's position, management, and prospects have satisfied the bankers that further assurances in the mortgage are unnecessary.

Trustee's interest in covenants.—The scope and substance of the covenants will depend upon the circumstances under which the mortgage is made. The trustee, while not involved in the adequacy of the covenants, should make it a point to examine them carefully when reading the draft of a mortgage, so as to assure itself that the covenants are satisfactory from the standpoint of administration of the trust and that they impose no duty upon the trustee which it is unwilling to accept. Various types of covenants of the mortgagor are found in corporate mortgages. Some of these are merely formal "restatements of obvious obligations" expressed in practically all mortgages in more or less the same language. Other covenants attempt to regulate the conduct of the mortgagor by providing what it shall or shall not do.

---

[1] See Article VI of the typical mortgage, p. 362.

"Formal" covenants.—Among the so-called "formal" covenants, are the following:

To pay as they mature the principal and interest on the obligations issued under the mortgage.

To keep an office or agency, in a specified city, where notices and demands under the mortgage may be served on the company.

That the mortgagor has good title to the property mortgaged, and that it will, at its expense, warrant and defend its title.

To furnish to the trustee, upon its reasonable demand, such further assurances as to title as may be necessary or desirable.

That the mortgagor will not do, or permit to be done, anything which would impair the lien of the mortgage.

To pay all taxes and other claims against the company, which if unpaid might become a lien upon the mortgaged property prior to the lien of the mortgage. In this section, however, it is usually provided that the company shall not be obligated to pay any such claim so long as it shall in good faith contest the validity thereof, and so long as, in the judgment of the trustee, the security afforded by the mortgage shall not be materially endangered by the contest.

That no lien on the mortgaged property shall be created which would be prior to the lien of the mortgage.

To maintain its corporate life and right to do business.

To properly record the mortgage and to pay any fees and expenses incident thereto.

To keep the mortgaged property in repair and in at least as good condition as it was at the date of the mortgage and to make all necessary renewals or repairs.

To protect bondholders from an unauthorized increase in the debt secured by the lien of the mortgage, nearly all mortgages contain a covenant that the mortgagor will not extend or in any way assent to the extension of the time for the payment of any interest on the outstanding bonds. Most mortgages go one step further and provide that any interest so extended shall not be entitled to the benefit of the lien of the mortgage except after the full payment of the principal of the outstanding bonds not so extended and of all interest thereon.

Other covenants.—Other covenants vary with the mortgage in hand. They frequently impose some administrative duties on the trustee. Typical of these covenants are those discussed below.

As to the underlying bonds.—In the case of a refunding mortgage, it is usual to insert covenants to the general effect that the mortgagor will pay as it matures the principal and interest on all underlying bonds, and that it will not issue additional underlying bonds, or extend the date of payment of existing underlying bonds. The trustee, under a mortgage containing such a provision, should promptly serve formal notice on the trustees of the underlying mortgages, of the execution of the new mortgage, and of the covenant therein contained. Sometimes the right to issue further underlying bonds for deposit under the *refunding* mortgage is reserved.

Taxes assessed against bondholders.—Many mortgages contain provision that the principal and interest shall be paid to the bondholders without deduction for taxes. Since the enactment of the Federal Revenue Act of 1913, with its provision for the "withholding at the source" of the normal tax on certain types of income, including bond interest, the tax covenant, in so far as it relates to income taxes, has generally undergone some qualification. Under the older mortgages with the unqualified tax covenant some effort was made to force the mortgagor to assume the full normal tax. Consequently, the newer mortgages containing a provision of this kind usually limit the liability to 2 per cent of the interest. When, during the discussion on the passage of the Federal Revenue Act of 1917, it appeared that collection of tax at the source would be abolished (except in the case of nonresident aliens) fears were felt as to the effect on bonds with such covenants of the rescinding of the withholding provisions of the law, and largely through the efforts of the Investment Bankers Association, "collection at the source" was continued in respect to the so-called "tax-free covenant" bonds.

Some mortgages also provide for the payment or refunding, within prescribed limits, of taxes such as the Pennsylvania "four mills" tax, the Massachusetts income tax, and the personal property or income taxes of other specified states. In the case, for example, of such a covenant made by a Penn-

sylvania mortgagor (see the "Telephone" mortgage, page 363), it is sometimes provided that the interest will be paid free of such tax. It is more usual, however, for the covenant to take the form of a promise to refund to the bondholder the amount of the specified tax, up to the agreed limit, assessed by the specified state against the bondholder, as the holder of bonds issued under the mortgage. The mortgage will usually provide that such refunds shall be made by the trustee, as the agent of the mortgagor, but from funds to be furnished for that purpose by the mortgagor, and only upon receipt from the bondholders, of written application, in form specified by the mortgage, and filed with the trustee within a specified period, say sixty or ninety days, after the date of payment of the tax to be refunded. Form 32 is a good example of the type of refund application, which is often required.

Form 32.—Personal Property Tax Refund Application.

APPLICATION FOR REFUND OF PENNSYLVANIA PERSONAL PROPERTY TAX

DIRECTIONS

Applicants for refund of tax on this form should, to avoid delay, observe the following directions:

1. This request may be made only by a holder who was an owner of the bonds and a resident of Pennsylvania on the date when such tax was assessed.
2. This request must be filed within sixty (60) days after the date on which the tax was paid and within ninety (90) days after such tax shall have become due and payable.
3. Request should only be made for the amount of tax actually paid (on the market value or the face value of the bond, whichever is less). The Company is not liable to pay to any owner in any calendar year a sum in excess of four (4) mills on each dollar of the face amount of the bonds with respect to which the tax was paid.
4. Applicant must sign affidavit following form of request.

THE HAGERSTOWN STEEL AND TUBE COMPANY

20-YEAR 6% DEBENTURE GOLD BONDS

TO THE HAGERSTOWN STEEL AND TUBE COMPANY,
Care, National Trust Company, Trustee,
200 Wall Street,
New York, N. Y.

Dated, —— 19—.

Sirs:—

I am the owner of $—— principal amount of 20-Year 6% Debenture Gold Bonds, Nos. —— issued by Hagerstown Steel and Tube Company, under its

Debenture Indenture to National Trust Company, Trustee, dated July 1, 1925, and was the owner thereof and a resident of the Commonwealth of Pennsylvania at the date of the assessment of the tax hereinafter mentioned.

As a resident of Pennsylvania, I returned said bonds for taxation for the year 19— at a valuation of $——, and on the —— day of —— 19—, I paid the sum of $——, the tax assessed against me by said State as the owner of said bonds, and which became due and payable on the —— day of ——, 19—.

Such taxes were not income, succession or inheritance taxes and the amount for which I claim reimbursement does not include any interest or penalty assessed upon or paid by me in addition to the amount of tax originally assessed. I hereby request from you reimbursement of said tax as provided by said Indenture. No other or previous application has been made with respect to the aforesaid bond or bonds for reimbursement of any tax or taxes imposed or paid for the same year to which this application relates.

Respectfully,

Name _____

Address _____

_____

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF } ss:

——, above named having been duly sworn according to law, on oath, deposes and says that the facts set forth in the foregoing request are true.

Signature of Applicant. _____

Subscribed and sworn to before me this ——
day of —— 19—

_____

Notary Public or other Official authorized
to take acknowledgments.

Insurance.—An agreement to insure against loss or damage by fire is found in practically every mortgage. Losses, if any, are payable to the trustee and the company as their interests may appear, and unless required by the trustee of a prior mortgage, the proceeds of any insurance are deposited with the trustee; although mortgages frequently provide that any single loss not exceeding, say, $5,000, may be paid direct to the mortgagor. The amount of loss which may be paid direct varies in different mortgages, depending upon the value of the insured property and other circumstances. The company is generally permitted to withdraw insurance moneys to reimburse it for the cost of *(a)* replacing the damaged or destroyed property, or *(b)* making betterments or extensions to other portions of the mortgaged property.

Title of Trust _____

Expired Policies should be { destroyed / returned to Co.

Address _____

INSURANCE COMPANY	Policy No.	INSURANCE EXPIRATION												Year	Amount	Remarks
		Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.			

Form 33.—Insurance Record.

Until recently the familiar insurance clause provided for the deposit of the insurance policies with the trustee. However, many of the newer mortgages permit the trustee to accept an annual statement from the company signed by one or more of its officers, giving the details of the insurance in force. In cases where the policies are deposited with the trustee they should be entered in an insurance record similar to that illustrated on page 107 (Form 33).

Occasionally the insurance provisions call for the periodical filing of a certificate by a recognized insurance expert that the insurance in force constitutes full coverage as required by the mortgage.

Protection solely through the establishment by a company of its own insurance fund, such as that permitted by Section 8, of Article VI, of the "Telephone" mortgage,[2] is sometimes permitted in cases where the property is scattered and the mortgagor is especially strong.

Life insurance policies are occasionally deposited with a trustee pursuant to a covenant providing for insurance on the lives of one or more of the mortgagor company's officers. The conclusion to be drawn from such a provision is that the mortgagor is short of executives of ability and that the death of the insured would have a detrimental effect on the business. Covenants to maintain "use and occupancy" insurance sometimes are found in mortgages covering factories and office buildings.

Net quick assets.—The covenant to maintain the company's net quick assets (the excess of the company's current assets over its current liabilities as defined in the mortgage) at a stated figure, or in a specified proportion to the total liabilities of the company, or to the amount of bonds outstanding, is of comparatively recent origin and has been developed by the underwriting bankers as a selling point.[3]

A covenant of this kind is unsatisfactory from the standpoint of administration by the trustee, and affords little or no actual protection to the bondholders. Barring bad faith on the part of executives, no corporation will intentionally permit net quick assets to fall below a safe point. It often

---

[2] See p. 364.

[3] See p. 109 for an example of net quick assets definition.

happens that, during a period of financial stress, an otherwise sound corporation may find itself temporarily unable to comply with the terms of such a provision; but ordinarily it would be to the interest of the bondholders to give the company a reasonable opportunity to work out of its strained position. In any event, a foreclosure during a time of business depression seldom produces satisfactory results from the standpoint of the bondholders.

In other words, such a provision makes it possible for a small percentage of bondholders, through an over-zealous trustee, to bring about a foreclosure at a most inopportune time. If such a default occur, the trustee is quite likely to be criticized by some bondholders if it takes no action; and, on the other hand, it is almost certain to be criticized by other bondholders if it does institute legal proceedings. It would not be so bad if the trustee could feel free to notify the bondholders of the situation and leave the matter in their hands. The practical aspect is that a notice from the trustee to the bondholders of the existence of such a default might so seriously injure the company's credit that liquidation would be brought about, even without the intervention of the bondholders.

Covenants restricting dividends or bond issues.—There are other varieties of the net quick assets provision which are sound in principle, the most common being that the company will pay no dividends on its stock or that it will issue no more bonds unless its net quick assets shall meet with the requirements of the mortgage provision. Such covenants are entirely workable from the standpoint of the trustee, and are of real protection to the bondholders. In any mortgage containing provisions relating to net quick assets, there is also a covenant by the company to file with the trustee periodically a statement, usually certified by accountants approved by the trustee, of its assets and liabilities, and of its net quick assets. Such a mortgage should contain a very clear and comprehensive definition of what is meant by net quick assets, as for example:

"The term 'net quick assets,' whenever used herein with respect to the Company, means the excess of its unencumbered quick assets over its current liabilities.

"The term 'quick assets,' whenever used herein, means and includes only,

(a) Cash on hand or on current deposit in banks or other depositaries.

(b) Good and collectible notes, trade acceptances, accounts, and bills receivable contracted in the ordinary course of business, if not in default and if due and payable within one year from the date as of which quick assets are being ascertained.

(c) Readily marketable securities taken in any case at not more than their market value.

(d) Goods manufactured and in process of manufacture, materials and supplies on hand and inventoried, the said goods, material, and supplies being taken at actual cost or at market value, whichever is the lower at the time of such inventory.

(e) Unexpired insurance premiums, discounts prepaid on bills payable (not including bond discounts), and prepaid taxes.

"The term 'current liabilities,' whenever used herein, includes accounts, drafts, bills and notes payable, royalties, rentals, and sinking fund obligations accrued, earned and unmatured interest charges upon the bonds at any time outstanding hereunder and reserves for taxes of every kind and nature, but excludes:

(a) The principal amount of the bonds issued and outstanding hereunder.

(b) Obligations not payable within one year from the date of the last preceding audit herein provided for.

(c) Drafts or bills of exchange drawn for the whole or any part of the amount payable on account of merchandise sold to others and which drafts or bills of exchange have been negotiated, and other contingent obligations."

Annual financial statements.—Many mortgages which do not contain a net quick assets covenant do require the annual audit of the companies' books, by certified public accountants, satisfactory to the trustee, and the annual filing with the trustee of a balance sheet, and sometimes, also, a statement of earnings certified by such accountants. Such a requirement, particularly in the case of industrial companies, is of real

value, as it places in the hands of the trustee available to the bondholders, an authentic, year-to-year record of the financial progress (or lack of progress) of the mortgagor.

In regard to the approval of accountants selected by the company the trustee should investigate the standing of any firm not already known to it. This is usually a simple matter except when the accountants employed are located in another city. In that event the trustee can secure a report from one or more local banks or protect itself with opinions from other members of the accounting profession. Likewise the trustee may be called upon to ascertain the standing of engineers or appraisers whose opinions are required by other provisions of a mortgage.

Equipment.—Other mortgages, particularly those of railroads and public utilities, contain a covenant to file periodically with the trustee a certified list of equipment or other similar property subject to the mortgage.[4]

Sales.—Still other indentures which permit the mortgagor to sell certain classes of property, or property of less than a stated value, without payment of the proceeds to the trustee, require the filing with the trustee at stated intervals of a certificate covering the details of such sales.

Appraisal.—Occasionally in mortgages of industrial companies, a covenant will be found requiring the filing with the trustee, periodically, but usually not oftener than every two or three years, of an appraisal of all of the mortgaged property, made by an engineer or appraiser, satisfactory to the trustee.

Maintenance and renewal.—Some mortgages require that the mortgagor shall annually expend out of earnings, for maintenance, a specified amount in dollars, or, as is more usually the case, a specific percentage of earnings.

In that event the mortgagor is required to file with the trustee, in addition to the balance sheet and statement of earnings, a certificate giving the details of the expenditures for maintenance during the period covered. This certificate frequently takes the form of an affidavit by certain officers.

---

[4] See further discussion under Equipment Trusts, Chapter XII.

Generally, such a mortgage will further require that, if the amount so expended, as shown by the certificate, is less than the required amount or percentage, the difference must be paid in cash to the trustee as a depreciation or maintenance fund, and held by the trustee, until withdrawn by the company, in accordance with the terms of the mortgage, after it has completed the delinquent maintenance expenditures.

Covenants to be calendared.—It is essential that the trustee carefully study the covenants as soon as possible after receiving the mortgage. All covenants, the terms of which call for observation on the part of the trustee, should be calendared on "tickler" cards (see Form 28, page 73) sufficiently in advance of the requirement date to assure proper attention.

Mortgagor's breach of covenants.—In case of failure by a mortgagor to comply with such a requirement, the trustee should send a prompt reminder. As stated in Chapter X, page 146, failure by a mortgagor to observe such covenants does not, under many mortgages, become a default entitling the trustee to enforce the remedies of the mortgage, except upon the elapse of a specified period, say 60 days, after written notice from the trustee to the mortgagor. Ordinarily, the first reminder from the trustee would be informal and not of the type to set running the period of grace prescribed by the mortgage. In the absence of directions from the holders of the percentage of the bonds required by the mortgage, the question of when the formal notice should be served would depend largely upon circumstances. Formal notice should not be served except after consultation with counsel.

It is not possible safely to generalize as to the proper action to be taken by a trustee in case the mortgagor should disregard its notice or fail to make good its breach of covenant. The question is first of all one of the exact legal rights of the trustee. The relative importance of the covenant in default and the apparent ability and willingness of the mortgagor to live up to the requirement may well have some practical bearing on the attitude of the trustee. If it is possible for the trustee to consult with the holders of a substantial percentage of the bonds, or with bankers who have underwritten all or a part of the issue, the views of such holders

or bankers should be considered. However, the situation is one in which the trustee should act only after submitting all phases of the question to its counsel.

In closing the discussion of this article of the mortgage the following quotation seems appropriate:

"It is important to keep in mind that the purpose of these covenants is to safeguard the value of the mortgaged premises in the interest of the mortgagee. They impose a personal liability on the mortgagor. Aside from the covenant to pay interest and principal promptly when due, they may not be valuable, in terms of currency, to the mortgagee; but the presence of these covenants in the mortgage may be highly important in affording a basis for stipulating that a breach shall constitute an event of default, so as to permit the trustee to exercise promptly remedies to prevent depreciation in the value of the mortgaged property, disastrous to the mortgagee." [5]

[5] William Lilly, "Individual and Corporation Mortgages," p. 114.

Chapter VIII

SINKING FUNDS AND REDEMPTION OF BONDS

The sinking fund.—Many corporate mortgages provide a means of amortizing the debt for which they are security, by requiring the mortgagor to make periodical payments into a fund, which is commonly known as the Sinking Fund.[1] Such a fund is ordinarily administered by the trustee under the mortgage, although in some mortgages a separate sinking fund trustee is named.

Sinking funds vary with business of mortgagor.—Generally speaking, the question of whether a given issue is to have a sinking fund is decided by the underwriting bankers, with the concurrence, of course, of the mortgagor. In determining this point the type of business in which the mortgagor is engaged is the first consideration. It is the general practice of underwriters to require a sinking fund in the case of bond issues by lumber, mining, and other companies, where the property which is mortgaged as security for the bonds obviously will be depleted through the operation of the business. It also is usual to recommend a sinking fund for bond issues of industrial concerns. The reason in this class of business is not so apparent, but, nevertheless, is sound. The chief value of an industrial plant is its value as a "going concern," and it almost invariably happens that a forced sale of such a plant, through bankruptcy or foreclosure proceedings, will produce much less than the actual value. It is consequently a prudent policy to require a periodical reduction of the debt, so that the equity of the company in its plant (or, to put it another way, the bondholders' margin of safety) shall be constantly increased. In many cases sinking funds are also required by underwriters because, if their provisions are wisely drawn, they have a stabilizing effect on the market, thus adding to the attractiveness of the issue.

On the other hand, it is becoming more and more the rec-

[1] Reference is made to the "Telephone" mortgage, p. 358.

ognized theory that railroad and certain public utility companies are entitled, because of their permanency, and so long as in their accounts they make proper allowance for depreciation, and maintain a conservative ratio between the amount of their capital stock and debt, to carry a practically permanent debt, bond issues being refunded from time to time as they mature. For this reason, many recent issues of such companies do not provide a sinking fund.

Basis for sinking funds.—In the case of a company whose property is depleted through the normal operation of its business, the logical basis is the amount of property used, as, for instance, a specified amount per thousand feet of lumber cut or per ton of ore mined. Industrial companies pass through periods of prosperity and periods of depression, and for this reason it is generally wise to require substantial reductions in their debt during profitable years and to avoid handicapping them by unnecessary fixed charges during periods of depression. Consequently, sinking funds of companies of this class are usually based on a percentage of net earnings. In still other cases, where the purpose is to increase the bondholders' margin of safety or to stabilize the market, the amounts of the periodical payments into the sinking fund are fixed, or are based on a specified percentage of the principal amount of bonds outstanding. At times the purpose is to amortize the entire debt by maturity, and the amount of the periodic payment is then set at a figure which at compound interest at the rate borne by the bonds will at maturity of the bonds equal the amount of the issue.

Operation of sinking funds.—There is a considerable variation in the provisions covering the operation of sinking funds. In some of the older mortgages it was provided that the cash payments should be invested by the trustee in specified classes of securities and such investments held by the trustee until maturity of the issue. This practice is not generally favored. While there may be some point to the acquisition by the trustee of underlying bonds, the plan of investing in securities entirely foreign to the mortgagor's business at an income yield smaller than a fair return on any successful business is not sound. It is now recognized as better practice to provide for the use of the fund in the acquisition of bonds of the issue

for the benefit of which the fund is created. Some sinking funds require that bonds acquired shall be canceled, while others require that they shall be held alive and the interest thereon collected as it matures and added to the sinking fund, thus adding the feature of compound interest, and over a period of years materially increasing the amount amortized through the operation of the fund. Where this cumulative feature is desired, the same result may be accomplished by authorizing the cancellation of the bonds as acquired, and providing that the sinking fund payments at the specified sum or rate shall be increased by a sum equal to the periodic interest which would have been due on the canceled bonds in the sinking fund.

Some mortgages permit the company to deposit with the trustee additional amounts not required by the sinking fund provisions. We speak of these as voluntary or optional payments. They are usually added to the required sinking fund payments and treated in the same manner.

Acquisition of bonds.—The sinking fund provisions relating to the methods by which bonds are to be acquired are of particular interest to the trustee. Here, again, there is a rather wide variety. One mortgage may require that the bonds shall be drawn by lot by the trustee for redemption at a specified redemption price; another, that bonds may be purchased by the trustee on tender by the bondholders, pursuant to published notice from the trustee requesting such tenders; while still another will authorize the purchase of bonds at public or private sale and, if sufficient bonds are not secured at or below a specified price, will require the redemption of as many bonds as will exhaust the balance of cash in the sinking fund. Application of moneys in the sinking fund often is not required unless the balance standing to the credit of the sinking fund amounts to a specified sum, deemed large enough to warrant setting the machinery in motion. Some of the new mortgages which authorize the issue of bonds in series, each subject to different provisions as to sinking fund and redemption, necessarily contain rather complicated sinking fund clauses.

The trust officer in reading a mortgage prior to execution should be certain that the provisions are entirely clear and

workable. Some of the particular points which should be considered are discussed below.

The measure of the payment.— In the case of variable sinking fund payments the mortgage should set forth just what evidence must be furnished to the trustee as to the sufficiency of each payment. If the payment is at a specified rate per cent of the net earnings, it is important that the mortgage should contain a clear definition of what constitutes net earnings, and further provide that the trustee may rely, as to the amount of such earnings, on some statement to be filed with it, as, for instance, a statement certified by certified public accountants, or verified by designated officers of the debtor. If the payment is at a specified percentage of the outstanding bonds, the mortgage should clearly state what bonds are to be considered as outstanding, for example, that all bonds which at any time have been certified and delivered by the trustee and have not been surrendered to it for cancellation shall be considered as outstanding.

At first glance, the meaning of the word "outstanding" seems perfectly clear; but, from the trustee's viewpoint, bonds are outstanding as soon as certified and delivered pursuant to the provisions of the mortgage, while, generally speaking, the company will not consider bonds outstanding until they have been disposed of by the company for value. The newer mortgages are carefully drawn to clarify this point, but the question has arisen under a number of mortgages. Under one, a test suit on an agreed statement of facts was brought in the New York courts,[2] and a decision rendered to the effect that bonds are issued and outstanding, not when they have been certified and delivered under the mortgage, but as soon as they have passed into the hands of third persons as enforceable obligations. In other words, in this particular case, bonds which had been certified and delivered under the mortgage, but were held free in the treasury of the company, were not considered outstanding. On the other hand, bonds which the company had sold, or which it had hypothecated, were considered outstanding. This decision was only partially satisfactory from the trustee's point of view, and while it has

[2] Bankers Trust Company v. The Denver Tramway Company, 233 N. Y. 604.

been used as a precedent in several other cases, it is not of great value in helping to settle similar questions under other mortgages, because there is almost always a difference in phraseology between any two mortgages.

The application of the fund.—The first question is whether the methods by which the trustee may acquire bonds for the fund are clearly stated. If, as is sometimes the case, provision is made merely for the redemption of bonds, it is only necessary to see that the redemption price or prices are clearly stated, and that there is sufficient time between the sinking fund payment date and the date on which the trustee is required to make the redemption to permit the trustee to draw bonds by lot and to publish notice of redemption as required by the mortgage. If the trustee is permitted to purchase bonds at public or private sale or on tender, and authorized to call for redemption only if sufficient bonds cannot be purchased to exhaust the funds available, it is important that sufficient time be allowed to complete the necessary steps. The duration of the purchasing period, the requirements as to publication of notice inviting tenders, and the provisions covering publication of the redemption notice should be adequately detailed in the mortgage.

Inviting tenders.—In all cases where the trustee is permitted or required to publish notice inviting tenders the mortgage should specify the period during which the notice must be published and the media of publication. A further stipulation should be made that the trustee may accept or reject any tender in whole or in part.

The following sinking fund notice is typical:

GENERAL MACHINE COMPANY

Six Per Cent Ten Year Sinking Fund Convertible Gold Bonds

The undersigned, as Trustee under Trust Agreement between General Machine Company and National Trust Company as Trustee, dated June 1, 1924, hereby gives notice that it will receive sealed offers for the sale for the account of the Sinking Fund of sufficient of the above-mentioned bonds to exhaust the sum, $51,292.21, now on deposit with it as such Trustee. All tenders must be for all or any part of the bonds offered, must state the price at which the bonds are offered, not exceeding 105 per cent of their principal amount and accrued interest, and must be received at the Corporate Trust Department of the Trustee, 200 Wall Street, New York City, before 3 o'clock

P. M. on April 27, 1925. Bonds accepted must be delivered on May 4, 1925, and interest on accepted bonds will cease on that date.

The Trustee reserves the right to reject any and all offers in whole or in part.

Dated at New York this 10th day of April, 1925.

NATIONAL TRUST COMPANY, Trustee.

By H. F. Wall, Vice President.

Acceptance or rejection of tenders.—It is well to have the mortgage provide a method by which the trustee shall determine which tender or tenders to accept in case more bonds are offered at one price than the available funds will purchase. As a simple example of this last point assume that $50,000 were available in a sinking fund and four tenders were received as follows:

A—$20,000 at 99 and interest	C—$10,000 at 100 and interest
B— 20,000 at 99½ and interest	D— 10,000 at 100 and interest

After accepting offers *A* and *B* the trustee would have somewhat over $10,000 left to take up $20,000 of bonds offered at 100. Three methods are used:

1. To draw by lot from all bonds offered by *C* and *D*.
2. To purchase $5,000 from *C* and $5,000 from *D*.
3. To take bonds, as between *C* and *D*, from the first tender received disregarding the subsequent offer.

This last method should be used only when specified in the mortgage. If the mortgage is silent on the question it would seem that the trustee might use either method "1" or method "2" and accord fair treatment to the bondholders concerned.

It is not always possible to determine at first glance which tenders of bonds are to be accepted. Some bonds may be tendered at certain prices and interest; others may be offered at "flat" prices, that is, without interest; while still other bonds may be offered for a stated amount in dollars. The trustee must place all offers on a comparative basis. For example: A tender of bonds at 98 "flat" may warrant acceptance over a tender at 97½ and interest. In any event the tenders can be compared only by computing in each case the actual cost in dollars. In some mortgages the accrued interest on bonds taken up through the sinking fund is payable by the mortgagor, in which case the factor of accrued interest should be disregarded in comparing the price of sinking fund offerings.

The trustee should send prompt notice of acceptance or declination of tenders, and the acceptance notices should give full directions as to the delivery of the bonds to the trustee If the published notice has not specified the date on which interest ceases on the bonds purchased, that date should be stated in the trustee's acceptance.

Offer of bonds by mortgagor.—Frequently the mortgagor itself will tender bonds to the sinking fund. This situation may present some difficulties to the trustee, particularly in case the bond issue is so closely held that, perhaps, no other tenders are received and the trustee cannot secure market quotations to compare with the mortgagor's tender. It is well to have the mortgage clearly state whether the mortgagor shall have the right to tender bonds which it may own.

Drawing by lot for redemption.—If the mortgage provides that bonds may be drawn for redemption for account of the sinking fund, it should state that if less than all of the outstanding bonds are to be so redeemed, the bonds to be called shall be drawn by lot, by any equitable method which the trustee in its discretion shall determine upon. The details of drawing by lot will be discussed later.

Custody of acquired bonds.—There should be specific provision as to whether bonds acquired by the trustee should be *(a)* held uncanceled, *(b)* held alive but endorsed as having been acquired by the sinking fund, *(c)* canceled. If the bonds are to be held uncanceled, or alive and appropriately endorsed, the mortgage will provide that the interest as it matures on such bonds shall be collected by the trustee and added to the sinking fund for use in future purchases.

Accrued interest and expenses.—To avoid possible dispute during the administration of the trust it is well for the trust officer, in examining the draft of a proposed mortgage, to see that specific provision is made that all expenses of administration, such as publication costs, as well as accrued interest on bonds acquired, shall either be charged to the sinking fund, or as is more usual (at least with respect to expenses), be paid by the company.

Surrender of bonds in lieu of cash.—If it is intended to permit the company to surrender bonds to the trustee in lieu

of making a cash sinking fund payment, this right should be clearly expressed, as well as the price at which the bonds shall be accepted by the trustee as offsetting the company's cash obligations.

Mortgages authorizing bonds in series.—Mortgages authorizing bond issues in series will provide that bonds of the different series may differ in their terms, such as maturity, interest rate, sinking fund, redemption, or conversion, and that the terms of each series may, within limits set forth in the mortgage, be fixed by the directors of the company. In such a mortgage, unless it is provided that an independent sinking fund may be operated for each series pursuant to the terms of the supplemental indentures or resolutions establishing such series, it is good practice to insert a sinking fund article which will set up provisions governing the general operation of all sinking fund deposits. These general provisions should direct the trustee to pro-rate the sinking fund moneys to the different series on the basis of the amount of outstanding bonds of each series, or should authorize the trustee to place tenders of different series on a comparative basis. It is simple for the trustee, if the funds are pro-rated and the amount available for each series transferred to sub-accounts. Otherwise, it may be necessary for the trustee to reduce all sinking fund tenders to terms of the "yield" or net return on the bonds offered.

Assume, for example, that series "A" 5 per cent bonds maturing in fifteen years are tendered at 87½ and series "B" 6 per cent bonds maturing in twenty years are tendered at 91. While the offer of series "A" bonds is at the lower price, their yield to maturity would be only 6.30 per cent against a yield of 6.75 per cent for the series "B" bonds if purchased at 91.[3] Consequently, on the basis of yield, the "B" bonds are the more favorable purchase.

Capital expenditure alternative.—Some mortgages, particularly those on property of public utilities, will provide that, in lieu of permitting the trustee to apply the sinking fund to the retirement of bonds, the company may withdraw

[3] Computed by Montgomery Rollins, "Table of Bond Values" (Interest payable semiannually). The above figures are carried to two decimal places only.

the cash in reimbursement to it for capital expenditures of the type which may be used as the basis for the issue of bonds. If such an option is contained in a mortgage and is availed of by the company, the sinking fund changes in character and becomes, in effect, a maintenance or betterment fund, not a sinking fund. The provisions of such a fund should be very carefully checked just as the bond issue provisions are checked. The problems from the trustee's point of view are practically the same.

Discussion of "Telephone" mortgage provisions.—The sinking fund and redemption provisions of the "Telephone" mortgage are typical (see Articles IV and V, pages 358 to 362). By those provisions the company covenants to pay the trustee a fixed amount semiannually. The moneys so received by the trustee are required to be applied to the purchase of bonds of series "A" at a price not exceeding that at which bonds may be called by lot for redemption, namely, 105 per cent of their principal amount. The matter of advertising for tenders is, in this case, left to the discretion of the trustee. Its decision on this point would depend chiefly on the extent to which bonds are available in the open market. For example, there would be much less reason for advertising for bonds which were actively traded in on the Stock Exchange than for bonds of an issue closely held by investors. If the trustee under the "Telephone" mortgage were unable to acquire enough bonds by purchase at or below the specified price it would be obliged to "call" bonds in an amount sufficient to exhaust the fund and the holders of bonds so called would be required to surrender such bonds to the trustee on the interest date specified in the redemption notice after which date interest on the "called" bonds would cease. The process of selecting bonds for redemption should be carried out in exact compliance with the stipulations of the mortgage. At least two representatives of the trustee should be present and, if practicable, a representative of the company. From cards, each bearing the number of an outstanding bond, the trustee selects a sufficient number, calculated at the redemption price, to exhaust, as nearly as may be, the available sinking fund moneys. Care should be taken to see that no cards are included for bonds which have been canceled

or those previously acquired for the sinking fund. As soon as the numbers have been drawn arrangements should be made for publication of the redemption notice as required by the mortgage. The "Telephone" mortgage, in common with many others, charges the mortgagor company with the responsibility of making proper publication of the notice. In practice the trustee generally supervises this detail at the request of, and in coöperation with, the company. In case a registered bond is called, notice should always be sent to the registered bondholder through the mails and most mortgages will so provide.

Large bond drawing.—The exacting nature of this phase of the trustee's activities will be realized by all who have been closely connected with a large bond drawing. One trust company in New York recently drew by lot for redemption $10,000,000 of bonds represented by more than 11,000 pieces, the bonds being a part of an outstanding issue of $35,000,000. The task of drawing and listing that number of bonds, preparing and proofreading the redemption notice, and, finally, making payment of the bonds on the redemption date is one likely to tax the organization of any trustee.

Rights of bondholder and company.—The subject of the redemption of bonds prior to maturity is one which warrants attention from every student of corporate trusts. In this connection the following statement of Mr. Francis Lynde Stetson[4] is of interest.

"The right of the bondholder to continue his investment until payable in due course is as inviolable as his right to receive payment at maturity. The right of the obligor to free himself from his interest-bearing debt when due either upon a named or accelerated date, as the stipulation may warrant, is similarly inviolable. These relative and conflicting rights must be made the subject of careful and adequate stipulations.

"The right to redeem before maturity is a valuable privilege of the obligor, particularly one obligated to supply a sinking fund. The redemption price may be par or a premium over par. The redemption price is a matter of bargain between

[4] "Some Legal Phases of Corporate Financing, Reorganization and Regulation," p. 64.

the obligor and the bond buyer. Usually it operates as a peg to stop the increase in the market price of the bonds, and, therefore, a redemption price high enough to leave some speculative possibility of increase in such market price is the usual insistence of the bond buyer."

During a period of high money rates the investor desires long-term bonds at the current rate of interest. On the other hand, the company which finds itself in the unfortunate position of having to borrow at such a time wishes if possible to issue either (1) short-term obligations, or (2) long-term bonds carrying a redemption feature, so that, when the money market eases sufficiently, it may refund the loan on a more favorable basis. When that time arrives the company, or the trustee acting under the company's instructions, will take such steps as may be required by the mortgage to call the bonds for redemption on a specified date. Should the company elect to redeem less than the entire issue (assuming that it has the right so to do) it will be the duty of the trustee to select by lot the bonds to be redeemed.

Redemption notice.—When bonds of an issue are to be redeemed, notice is published of the company's intention. Here is an example of such a notice prepared pursuant to the terms of the "Telephone" mortgage:

NOTICE OF REDEMPTION

THE TELEPHONE COMPANY OF AMERICA

To the Holders of The Telephone Company of America Twenty-five year First and Refunding Mortgage 5% Sinking Fund Gold Bonds, Series "A," issued under First and Refunding Mortgage, dated October 1, 1925, to National Trust Company, as Trustee.

Notice is hereby given that The Telephone Company of America has elected to redeem and pay off, on April 1, 1926, all of the above-mentioned bonds then outstanding, at 105 per cent of the face value thereof, with accrued interest thereon, in accordance with the terms of said bonds and said First and Refunding Mortgage, and that all of said bonds are called for redemption on said date. On said date there will become due and payable on each of said bonds, at the office of National Trust Company, 200 Wall Street, Borough of Manhattan, City of New York, the principal of said bonds, together with said premium and accrued interest to said date. Interest on said bonds will cease to accrue from and after said date.

The coupons due April 1, 1926, should be detached and presented for payment through the usual channel.

Dated January 30, 1926.

THE TELEPHONE COMPANY OF AMERICA.
By L. H. Bell, President.

Affidavits of publication.—Upon completion of publication of the redemption notice the trustee should secure from the publishers of the newspapers, or other periodicals wherein the notice appeared, affidavits bearing a copy of the notice and setting forth the dates of publication. If notices have been mailed to registered holders an appropriate affidavit should be given to the trustee by the person mailing the notices. The affidavits of publication and mailing are then placed in the trustee's document file as evidence of compliance with the mortgage provisions.

Interest loss through failure to present bonds.—Interest on "called" bonds ceases on the redemption date and investors who do not carefully follow this feature of their investments frequently discover many months afterward that they are receiving no return from the "called" securities. A situation of this kind often results in complaints from bondholders who have failed to take notice of the redemption. The feelings of the bondholder are sometimes aggravated by reason of the deduction from the redemption price of interest paid since the redemption date. Paying agents use their best efforts to prevent payment of coupons from called bonds, but, notwithstanding their vigilance, coupons from called bonds occasionally will slip through. For example, assume that bonds of certain numbers are called for redemption on April 1. On the following July 1 coupons from some of the called bonds are collected by the bondholder. On the next succeeding January 1 the coupons from the same bonds are detected by the paying agent and returned to the bondholder who then presents his bonds for payment with a demand for interest subsequent to the call date. In matters of this kind several New York trustees and paying agents have used the following form of letter in replying to the bondholder:

"Under the terms of the call, the bonds, when presented for payment, must bear the July 1, 1924, and all subsequent coupons, and as the bond in question was presented with the July 1, 1924, coupon detached, we followed the prevailing custom of paying agents in this city and deducted the amount of the missing coupon from the redemption value of the bond.

"A matter of policy is involved which concerns not only ourselves but all paying agents. Experience has shown that

no amount of care in the offices of such paying agents will insure both the instantaneous payments of all coupons which ought to be paid (and that is a matter which is of vital importance to the bondholders as a class), and at the same time insure non-payment in every instance of every coupon which ought not to be paid because called for previous redemption. As paying agents, we do not act as guarantors either to the obligor on the bond or to the bondholder that no error whatever will occur in connection with the payment of coupons. All we can undertake to do is to furnish the best possible service and establish the best possible safeguards against error.

"The terms of the bond and coupon are explicit and carry clear notice to the bondholder that he is not entitled to receive payment of coupons from bonds called for previous redemption. The call for redemption was published in accordance with the requirements of the bonds. The coupon presented was one which, according to its terms, should not have been presented by the bondholder, and to the payment of which he was not entitled. It goes without saying that the bondholder's action in presenting this void coupon for payment and in obtaining payment of it from us was altogether the result of a mistake and not intentional on his part. It was, however, as much his duty to heed the terms of the contract and the published notices of redemption as it was ours to do so. Upon full consideration, we cannot feel that the bondholder is, under such circumstances as these, entitled to collect the January 1 coupon or to retain the proceeds of the July 1 coupon, which was paid as the result of a mutual mistake.

"The amount involved is small and we so much wish to give satisfaction to all who have dealings with us that we should be glad indeed if we could see our way clear to meet your wishes and refund the amount of the July coupon. But, after consultation with the principal paying agents in this city, we are advised that this would involve the establishment of a very troublesome precedent. They feel that the solution of the problem lies in bringing very emphatically to the attention of the investors, and of banks, trust companies, and dealers who collect their coupons, the fact that it is necessary to keep track of the published calls for redemption of bonds of the issues in which they or their clients are interested. The paying

agents fear that the result of refunding the July coupon in this case would be to lure investors and their representatives into a false sense of security and make them less attentive than heretofore to published notices of redemption, thus aggravating a situation which is already troublesome. It would seem that this problem can be solved only by the coöperation of investors and collecting agents with paying agents, to the end that redemption notices shall not be disregarded."

Chapter IX

PLEDGED SECURITIES; RELEASES; SUPPLEMENTAL MORTGAGES

Control of pledged securities.—Mortgages which involve the pledge of stocks or bonds as security, in addition to the lien of the mortgage on physical property, contain various provisions relating to the control of the pledged securities. The recognized practice is to group provisions of this nature in a separate article of the mortgage[1] to which the trustee will refer when considering questions arising out of its interest, as pledgee, in such securities.

Briefly, the intent of these provisions is to permit the company, in the absence of default, to collect the income from, and to vote upon, the pledged securities, although the trustee has physical possession thereof and the right to assume full control in case default occurs. With the object of preventing any diminution in the security, a number of protective clauses are usually inserted in the mortgage. For example:

(a) While the company shall be entitled to collect the income from the securities it shall not receive any payments on account of principal nor any capital distributions; *(b)* while the company shall be entitled to use a sufficient number of shares of stock to qualify directors or officers of the company whose stock is pledged, the use of stock for that purpose must be under conditions satisfactory to the trustee; *(c)* while the company shall have the right to vote stock for all ordinary purposes, it shall vote for an increase in the corporation's indebtedness or capitalization only to the extent permitted and upon the conditions imposed by the mortgage; *(d)* in case of reorganization, consolidation, or merger of any company whose securities are pledged, the mortgagor company is authorized, with the assent of the trustee, or the trustee alone is authorized to take such steps as may be necessary to protect the interest of the bondholders.

[1] Reference is made to Article III of the typical mortgage, p. 354.

To summarize, in the company and the trustee are combined the full powers of the ordinary security-holder. Generally speaking, the company, in the absence of default, is permitted to manage the interests represented by the pledged securities as it manages its business; but its rights in this respect are subject at all times to mortgage provisions designed to protect the interests of the bondholders.[2]

Possession of pledged securities and registration thereof.—In practically all cases the pledged securities are actually deposited with the trustee. Exceptions to this rule are those instances where the securities are in the hands of the trustee under a prior mortgage, which circumstance is discussed later in this chapter. Certificates of stock placed with the trustee under a mortgage may or may not be registered in the trustee's name. There is no uniformity in mortgage requirements on this subject. Under many mortgages the company is permitted, in the absence of default, to have pledged securities registered in its name or in the names of its nominees; while in other mortgages the trustee is required promptly to secure transfer of the securities into its name or the names of its nominees. In still other mortgages the matter of transfer is left to the discretion of the trustee. It is preferable from the trustee's viewpoint that the requirement of the mortgage be specific; if, however, the matter of transfer is optional with the trustee, its action will be controlled by the standing of the mortgagor and other circumstances surrounding the trust.

Nominees of trustee.—The practice of permitting registration of pledged securities in the names of nominees rather than the name of the company or the trustee is largely due to the greater difficulty of effecting the transfer of securities registered in the name of a corporation or a fiduciary. The nominee is required to execute an assignment of the securities and to surrender possession thereof promptly upon completion of the transfer. Good trust company practice goes one step further and requires the execution by the nominee, as of the date of transfer, of a declaration of trust. Form 34 is an

[2] The reader should bear in mind that this chapter concerns only collateral pledged under mortgages as additional security. For provisions affecting collateral trust indentures, under which only stocks, bonds, or other intangible security is pledged, see Chapter XII.

example of such a declaration. In cases where a nominee who is an employee of the trustee leaves its employ the trustee should carefully consider the advisability of transferring the securities to another nominee. All holdings of nominees should be recorded on nominee cards (Form 35), so that notices, dividends, etc., sent to the nominee may be readily traced to the proper account.

Form 34.—Declaration of Trust.

DECLARATION

THIS IS TO DECLARE that Certificate — No. —— for —— shares. of —— Stock of the ——— issued in my name was not purchased with funds belonging to me, and the said Certificate is not my property either directly or indirectly, but is subject to the control of Bankers Trust Company——— and has been assigned and delivered to it prior to the execution of this Declaration.

I further declare that I never have had, and do not now have any personal or beneficial interest in said Stock, and that the dividends thereon or the rights in respect thereof, if any, as well as any proceeds arising from the sale thereof do not in any manner belong to me, but are subject to the order and control of said Trust Company.

WITNESS MY HAND AND SEAL THIS —— day of —— 19—.

——————————— [L. S.]

Signed in the presence of:

———

Form 35.—Nominee Card

STOCK				NOMINEE		
FOR ACCOUNT OF				NO. OF SHARES	AMOUNT	
					$	
RATE	% PAR VALUE	DATES PAYABLE	TOTAL		$	
F 1002						

Directors' shares.—There is usually contained in this article of a mortgage authorization to the trustee to do whatever may be necessary to maintain or to extend the corporate existence of any corporation, all or a part of whose stock may be pledged under the mortgage, and further authorization to the trustee to use, or to permit the company to use, a sufficient number of shares to "qualify" directors or officers of such corporations where the law or the corporation's by-laws require officers or directors to be stockholders. The usual practice, after such transfers for qualifying purposes, is to require the directors or officers to endorse their respective qualifying certificates and to redeliver them to the trustee.

Pledge subject to other mortgages.—Especially in the case of refunding mortgages, securities frequently are pledged, subject to prior pledge under existing senior mortgages. Under such circumstances actual delivery of the securities cannot be made to the trustee of the junior mortgage until the securities are released from the prior lien, in accordance with the terms of the latter, usually only upon the satisfaction and discharge of the senior mortgage. The junior trustee promptly upon execution of the junior mortgage pledging securities subject to a prior lien, should serve formal notice of such pledge upon the senior trustees and demand that the senior trustees upon release of the securities from the senior liens shall deliver the securities to it under the junior mortgage, rather than to the company or to any other party otherwise entitled thereto.[3]

Dividends and interest.—With but few exceptions mortgages which cover pledged securities provide that, in the absence of default, the mortgagor shall be entitled to receive and use, without restriction, all interest and dividends paid on the pledged securities. In the case of coupon bonds it is usually provided that the coupons as they mature shall be detached and delivered to the company. Registered securities, if standing in the name of the company or its nominee, require no action by the trustee. If, however, the registered securities are in the name of the trustee or its nominee, the trustee will be called upon to deliver all necessary dividend or interest

[3] Item XI of the Mortgage Examination Guide, p. 31, covers this point.

orders in favor of the company or its nominee. In the event of a default under a mortgage covering pledged securities, one of the first duties of the trustee is to review the condition of the pledged securities, to arrange for a prompt transfer to its name of any securities not so transferred, and to cancel all outstanding interest or dividend orders in favor of the company. During the existence of a default the trustee should collect and hold as a part of the trust estate all payments on account of the pledged securities.

Payment on account of principal.—Practically all mortgages of this kind provide that payments on account of the *principal* of pledged obligations, or dividends on pledged stock which are of the nature of capital distributions or liquidating dividends, shall be payable to the trustee and not to the company, and shall be held by the trustee until applied by the company for purposes set forth in the mortgage. It is usual for the mortgage to permit such funds to be repaid to the company to reimburse it for capital expenditures of the nature authorized as the basis of an application (1) for additional bonds, or (2) for the withdrawal of the proceeds of released property.[4] Sometimes the company, may, at its option, add such funds to an existing sinking fund or require the trustee to apply the funds to the redemption of outstanding bonds.

Voting pledged stock.—Following the principle outlined in respect of income on pledged securities, it is generally provided that, in the absence of default, the mortgagor shall have the right to vote the pledged stock at stockholders' meetings, but subject to certain logical restrictions. Again, as in the case of dividends, no action is required of the trustee, unless the securities are registered in its name or in that of its nominee. If so registered it is usual for the mortgage to provide that, unless a default exists, the trustee shall, on the written application of the company, deliver to it or on its order all necessary proxies to permit the company to vote the pledged securities.

The usual restrictions on the exercise of voting power in respect of pledged stock are such as to prohibit:

---

[4] These provisions are discussed on pages 93 and 139, respectively.

1. Any increase in the indebtedness of the company, the stock of which is voted, unless provision is made for the deposit of the full amount of such increased indebtedness as additional security under the mortgage.

2. Any increase in the capital of the company the stock of which is voted, unless provision is made for the deposit under the mortgage of a proportionate amount of the new stock; so that, after the increase, the trustee shall hold no smaller proportion of the entire capital stock than it did before such increase.

3. In the case of certain subsidiary or controlled companies, where a voting control or substantial control is represented by the stock originally pledged, any increase in the securities having a voting right unless provision is made that the percentage of voting control represented by the pledged stock shall not be diminished.

4. Any action to surrender the company's franchise, or to terminate its corporate existence, except with the assent of the trustee.

Proxy limitations.—In executing proxies covering pledged securities, it is good practice for the trustee to give proxies which are limited to certain expressed purposes, as, for example, the election of directors, or, if it is necessary to give a full power, to refer in the proxy to the mortgage and provide that the proxy shall not be voted for any purpose inconsistent with the provisions of the mortgage.

Even though the mortgage may not specify the form of the company's application to the trustee for the execution of proxies, it is appropriate for the trustee to require a certified copy of a resolution of the directors of the company authorizing each request, or a general resolution of the directors, authorizing certain officers of the company to make such requests.

During the existence of default it is the rule for the trustee itself to exercise the voting power.

Subsidiary or controlled companies.—In the case of mortgages where all or a part of the pledged stock represents the mortgagor's interest in certain subsidiary or controlled companies, such interest being a substantial factor in the companies financial or industrial position, it is usual to find most

stringent and detailed provisions as to the voting rights on the stock, particularly in the event of the merger of any of such companies, either with the mortgagor or with other subsidiary or independent companies; or in the event of their reorganization.

Protection of pledged stock.—Many indentures which contemplate the deposit of stock as collateral provide that in case a majority of the stock of a corporation is pledged no part thereof may be released which would reduce the amount pledged below 51 per cent of the capital stock of such corporation, unless all of its stock is simultaneously sold and released. The obvious reason for this provision is to continue in the trustee, once it is obtained, the voting control of any corporation, all or a part of whose stock is pledged.

Reorganization or merger.— Under the more modern mortgages the trustee is often given a wide discretion to act for the best interests of the bondholders in the event of reorganization, consolidation, or merger, affecting a company whose securities, in whole or in part, are pledged under the mortgage. The well-drawn mortgage always takes into consideration the possibilities of merger or reorganization, and the careful draftsman endeavors to insert provisions broad enough to cover all contingencies which reasonably can be foreseen. The discretionary powers of the trustee in this direction are checked by such restrictive provisions as may be deemed necessary for the protection of the trust estate.

Release of portions of mortgaged property.— After the recording of a mortgage in the various jurisdictions in which the mortgaged property is located, and pending the final discharge and satisfaction of the mortgage, the property covered can be conveyed only subject to the lien of the mortgage, unless there is recorded in the jurisdiction in which the property to be conveyed is located an instrument executed by the trustee releasing, from the lien of the mortgage, the trustee's right, title, and interest in and to the property to be conveyed.[5] As such instruments cover a part only of the mortgaged property they are generally referred to as "partial releases," to distinguish them from the instrument of release

[5] Reference is made to Article VIII of the typical mortgage (page 368).

or satisfaction executed by the trustee upon the final payment of the debt secured by the mortgage, completely to discharge the lien of the mortgage.

Purpose of release provisions; restrictions imposed.—A corporation would find a mortgage a severe handicap if during the life of the mortgage, it were unable to sell and give good title to any part of the mortgaged property. As a consequence, practically all mortgages contain provisions which permit property no longer necessary or advantageous in the proper operation of the company's business to be released, upon certain conditions, from the lien of the mortgage. It is customary to require that the proceeds of sale of any property so released shall be deposited with the trustee.

Some mortgages contain special provisions which have particular reference to the type of business carried on by the debtor. For instance, the release clauses of most railroad mortgages contain a restriction to the effect that no property shall be released if thereby the continuity of the line of railroad would be broken. A similar restriction is applied to transmission lines in power company mortgages. Mortgages on properties of industrial and other concerns using a considerable amount of machinery and equipment often specially authorize the sale by the company, without release by the trustee, of such machinery or equipment as is no longer necessary in the operation of the business, on the condition that such property is replaced by other property of at least equal value. In some mortgages of this kind the debtor company is required to account periodically to the trustee for such sales, and in other mortgages a limit is placed on the amount of property which may be sold annually without release by the trustee. Some mortgages permit the mortgagor to make all necessary alterations to its operating property such as plant, transmission lines, or lines of railroad, not including changes in its real estate holdings, without obtaining from the trustee a formal release of the property replaced in the course of such alterations.

The release of a very large part of the property might so affect the character of the mortgaged premises that subsequent sale of the bonds would constitute deceit or misrepresentation. In such cases a supplemental indenture may be

advisable, pursuant to which the outstanding bonds would have to be deposited with the trustee and an appropriate endorsement stamped thereon. In examining into any large releases the trustee should keep this possibility in mind.

Before executing any release the careful trustee should compare the detailed description of property appearing in the release with the description given in the company's application, so that no property will be released except that formally applied for by the company pursuant to the mortgage provisions.

Conditions of release.—In some few mortgages it is possible to determine in advance the consideration which the trustee must receive when releasing property. For example, a mortgage on property of a real estate development can very well identify the plots by number and specify the amount to be deposited with the trustee for each plot released. However, such mortgages are exceptions; as a rule, it is necessary to draft elaborate provisions which must be complied with before the trustee is authorized to execute any release of property.

The typical provisions of a mortgage in respect to the release of property are: (1) that the property to be released shall not be necessary or advantageous in the operation of the business of the mortgagor; (2) that the company has sold or exchanged, or has contracted to sell or exchange, the property for a consideration of at least equal value; (3) that the consideration shall be paid or conveyed to the trustee; and (4) that the company shall make written application to the trustee, in the form prescribed by the mortgage, for such release making the showing as to facts required by the mortgage.

Form of mortgagor's application.—The form of application differs widely with each mortgage. In the older mortgages it was common to require merely a resolution of directors, but the right to obtain the release of property was often rather closely restricted. The more modern mortgage is apt to be much more liberal in its right of release; but, on the other hand, it is much more exacting in its requirements as to the showing necessary to obtain a release. For example, one modern mortgage permits the release of any part of the mortgaged property but requires the following to support the application:

1. A certified copy of a resolution of the board of directors or executive committee of the mortgagor stating the facts as to the sale or agreement to sell, and authorizing the application for release.

2. A certificate in affidavit form by the president or any vice-president and by the chief engineer, treasurer, or any assistant treasurer stating:

(a) That the property to be released is no longer necessary or advantageous in the proper operation of the business of the company.

(b) That the company has in good faith sold or has contracted to sell the property for a specified consideration.

(c) That, in the judgment of the officers, the consideration to be received is of a value to the company at least as great as the value of the property to be released.

(d) If the consideration is to be other than money a full detailed statement of such consideration.

3. If the consideration is to be other than money, an opinion of counsel that, upon completion of the transaction, the company will acquire good title to the property comprising the consideration, and that such property will, without further action by the company or the trustee, become subject to the lien of the mortgage; or, if further action is required to subject the new property to the lien of the mortgage, approval of the form of such instruments as may be necessary for that purpose.

4. If the stated value of the property to be released exceeds the sum of $100,000, an appraisal by an independent engineer or appraiser, selected by the company and approved by the trustee, of the value of the property to be released and of the consideration to be received.

5. Delivery of the consideration to the trustee, simultaneously with the delivery of the release.

It is apparent from the above that, while authority is granted for the release of any part of the mortgaged property, great care was taken, in drafting the provisions authorizing releases, to prevent possible loss to the trust estate through such transactions.

Substitution of property on "utility" basis.—Some of the modern mortgages provide that property substituted for prop-

erty released must have a value or *utility* at least equal to that of the property released. A somewhat comparable provision is contained in the "Telephone" mortgage.[6] The use of utility as an alternative for value, particularly in the case of public utility mortgages, is becoming more common, and, while, from a broad point of view, the provision is undoubtedly wise, it can be safely used only in the case of a company of financial strength and capable management, as the dollar value of the mortgaged property might be materially reduced through a series of sales and replacements on a "utility" basis, if no regard were given to the values involved.

Deferred payments.—Many of the newer mortgages make specific provision for the release of property on deferred payment sales. In such a case the mortgage usually provides what percentage of the sale price must be paid in cash and also for a properly recorded assignment to the trustee of the purchase-money mortgage, and the deposit with the trustee of the notes or other obligations issued thereunder. In general this is a wise provision, as inability to sell against a reasonable purchase-money mortgage often mitigates against a possible advantageous sale of property no longer of real use to the company.

Eminent domain.—Another provision now commonly found in mortgages is that covering the contingency of a part of the mortgaged premises being taken under the power of "eminent domain." Frequently, property subject to a mortgage will be required by a governmental body for public purposes, such as parks, roadways, and so on. In that event condemnation proceedings may be brought, or the governmental body may purchase the property in question, from the mortgagor. Some mortgages authorize the trustee, under these circumstances, to execute a release upon receiving an appropriate opinion of counsel acceptable to the trustee and upon deposit with the trustee of the moneys received as compensation for the property so taken or purchased.

Abandonment of mortgaged property.—Due to changed conditions railroads sometimes find themselves burdened with mileage which is actually more of a liability than an asset.

---

[6] See page 369.

The development of automobiles and improvement of roads has forced the railroads, in many cases, to operate some of their mileage at a loss. Usually these unremunerative portions of the line are small branches which may be cut off without affecting the operation of the main lines.

In a situation of this kind the railroad probably will approach the trustees of its mortgages on the subject of abandoning the unremunerative mileage. If the railroad is applying to the Interstate Commerce Commission for authority to abandon the line in question the trustee probably will be content to appear before the commission, state its position as trustee, and await the commission's decision. Of course the trustee should not take any action in matters such as this without having its counsel approve each step. It should also see that the "scrap" value of the abandoned line is paid to the trustee of the senior mortgage on the line.

Underlying lien.— In the case of mortgages which are subject to underlying liens it is usual to provide that, if property released is subject also to an underlying lien, the company shall deposit the proceeds of the release with the prior trustee in lieu of its obligation to deposit under the mortgage in question. Good practice dictates the policy of the junior trustee receiving a formal acknowledgment from the prior trustee that it has received the proceeds and will apply them in accordance with the provisions of the underlying mortgage.

Application of proceeds.—As previously stated, most mortgages require the deposit with the trustee of the proceeds of released property and also provide for the disposition by the trustee of such proceeds. If the consideration takes the form of property rather than cash, the property is held as a part of the trust estate. The following alternatives sometimes are given, as to the disposition of cash proceeds:

1. Repayment to the company in reimbursement for the cost of additional property purchased and subjected to the lien of the mortgage, or for the cost of additions or betterments, chargeable to capital, made to the mortgaged property. It is usual to provide that only such expenditures as are made after the date of the release may be the basis of such an application.

2. Application, at the option of the company, to the re-

demption of outstanding bonds in accordance with the terms of the mortgage, to the purchase of outstanding bonds at public or private sale, or on tender, or payment into the sinking fund for use as therein provided. Many mortgages provide that if the company shall not apply the proceeds, within a specified period, say, one year, to the purchase of property or to additions or betterments, or in writing notify the trustee of its intention so to do, the trustee shall, without further action by the company, apply the funds to the redemption or purchase of outstanding bonds as provided in the mortgage. A provision of this kind requires careful watching by the trustee, and the date of each release should be carefully calendared so that the expiration of each period may be noted. Many trustees, as an act of courtesy to the mortgagor, notify it a month or so before the expiration of each period, so that the company may not be embarrassed through an oversight on its part.

Release of property during receivership.— Most recent mortgages provide that the right of the mortgagor to apply for the release of property shall terminate with the happening of an event of default. Even though the mortgage does not contain such a provision, the diligent trustee will use extreme caution in the case of an application at a time when the mortgagor is in default. While good policy dictates that the form of all applications for release should be submitted to counsel for the trustee for their approval, any application received during the existence of a default should be passed on by counsel with due consideration of the circumstances of the default and of the effect of the proposed transaction on the interests of the bondholders.

Many modern mortgages contain a very wise provision that, during the existence of a default, the receiver of the company (if one has been appointed) shall have the right, with the consent of the trustee, to act in the place of the company in connection with the release of property, and if the trustee, upon default, shall have entered into possession of the mortgaged property, it shall have the right, without action by the company, to release property from the lien of the mortgage, upon terms which, in its judgment, shall be in the interest of the bondholders.

Supplemental indentures.[7]—As may be inferred from the name, a supplemental indenture is an instrument, executed by the mortgagor, or by both the mortgagor and the trustee, to modify or add to the provisions of the mortgage under which it is executed.

Supplemental indentures are created to accomplish a variety of purposes, among which are:

1. To convey to the trustee, as additional security for the bondholders, property, real or personal, not previously subject to the mortgage. This is by far the most common type of supplemental indenture, and usually is executed by the mortgagor only, as it is merely a conveyance in trust to the trustee. Such an indenture should be properly recorded.

2. To evidence the terms of new series of bonds, issuable under a mortgage providing for bonds in series. Supplemental indentures are not required or executed in all such cases, as many mortgages provide that the terms of each new series of bonds may be fixed by resolution of the directors of the company. However, even in such cases, it is sometimes considered better practice for the mortgagor and the trustee to execute a supplemental indenture, which is placed on record in the various public offices in which the mortgage is recorded.[8]

3. To evidence the surrender by the mortgagor of one or more of its rights under the terms of the original mortgage, or the extension to the bondholders of some additional privilege.

To this point we have considered only supplements which in no way diminish the rights of the bondholders, consequently, the consent of the bondholders is not required or obtained.

4. To evidence a change in one or more of the covenants of the mortgagor in the original mortgage. Such a change must always affect, to some extent, the rights of the bondholders, and, therefore, the trustee should not join in the execution of such an indenture except upon the assent of the holders of all the outstanding bonds in any way affected by the proposed change. The assent of the bondholders is usually

---

[7] See the "Telephone" mortgage, page 389.

[8] A supplemental indenture of this kind should be analyzed in the same manner as the original mortgage. See Mortgage Examination Guide, Form 1, page 30, and History of Trust, "half sheet" Form 2A, page 36.

evidenced by the deposit of the bonds with the trustee, or other designated depositary, under an appropriate agreement or letter of instructions, authorizing the trustee to join in the execution of the proposed supplement and to place on the bonds themselves an appropriate endorsement. The purpose of the endorsement is to put all subsequent holders of any of the bonds upon proper legal notice of the change in the terms of the original mortgage.

While, in the absence of any provision to the contrary in the mortgage itself, the unanimous consent of the bondholders is required, there are exceptional cases under which a trustee for the good of the bondholders as a whole will join in the execution of such a supplement, provided the consent of substantially all of the bondholders has been obtained, and provision to the trustee's satisfaction is made for the protection of non-assenting bondholders.

Unanimous consent by bondholders to any change in the terms of a mortgage is most difficult to obtain, and this requirement presents an opportunity to the type of bondholder who attempts to secure personal profit from a chance to obstruct. As a consequence, the more modern mortgages sometimes contain a provision that supplemental indentures altering the provisions of the mortgage, but making *no change in the terms of payment* of the outstanding bonds, may be executed by the trustee and shall become effective upon the assent by the holders of a specified percentage, say, 85 per cent of the outstanding bonds. This, it seems, is a very sensible provision and one which, if generally adopted, would, in time, do much to make unprofitable the business of obstruction now pursued by a few investors who are not too scrupulous as to the source of their profit.

Chapter X

Defaults and Remedies

"Events of default."—So long as the financial life of the mortgagor runs smoothly, the corporate trust department has little or no interest in those sections of the mortgage[1] which define the various "events of default" and the remedies available to the trustee and the bondholders in case of default, such as the mortgagor's failure to pay interest or principal on the bonds, to provide sinking fund installments, or to keep other covenants contained in the mortgage. However, as soon as a default occurs or is impending, the trustee should examine into the methods by which the remedies may be enforced and discuss with its counsel a proper course of action.

Because any action by a trustee under these provisions of a mortgage should be taken only after full consultation with counsel, and, further, because any discussion of the subject would be mainly legal in its scope, no attempt will be made in this book to do more than look into the practical aspects of the subject. Those readers who are interested in pursuing further this phase of corporate mortgages are referred to existing works by well-known attorneys.

One of the best discussions, from the point of view of the trust officer, is found in the paper read by Mr. James Byrne before The Association of the Bar of the City of New York, entitled "The Foreclosure of Railroad Mortgages in the United States Courts," and, supplementing this, the lecture before the same body by Mr. Paul D. Cravath on "The Reorganization of Corporations; Bondholders' and Stockholders' Protective Committees; Reorganization Committees; and the Voluntary Recapitalization of Corporations." Both of these addresses have been published in "Some Legal Phases of Corporate Financing, Reorganization and Regulation" to which the authors have referred on several occasions.

[1] This reference is to the text of the "Telephone" mortgage, Article IX (page 372).

The following statement of Mr. Roberts Walker,[2] relating to the broader aspect of the subject, is also of interest:

"These remedies [in event of default] ordinarily occupy a separate Article of from ten to twenty-five Sections, and define the defaults—for example, failure to pay interest, failure to pay principal, failure to live up to covenants, or failure to keep out of a receivership—and provide a diversity of courses available to the trustee or bondholders when defaults occur. You will readily apprehend that lawyers have expended their most vigilant efforts in making the default provisions 'leak-proof.' According to the terms of the mortgage, the trustee may take possession of, and may operate, the mortgaged property, may declare the principal of the bonds due and recover a money judgment without more formality or red tape, may have its own receiver appointed forthwith, may sue for a foreclosure and sale, may sell of its own motion, or may do other things. In practice, the matter is by no means so easy as it sounds. Things have not changed greatly since 1897, when Moorfield Storey, Esq., of Boston, wrote:

" 'The most skillful lawyers . . . have been engaged to draw mortgage deeds . . . with careful and explicit provisions defining the rights and remedies of the creditors in case of the debtor's inability to pay its debt, authorizing them through their trustee to take immediate possession . . . and providing further for speedy foreclosure and sale. . . . It would be impossible . . . to draw instruments which were clearer or more carefully guarded than many of these agreements.

" 'The last three years have shown us that these contracts cannot be enforced in the courts; that the rights which they are intended to secure are not recognized, and that for all practical purposes the creditor is at the mercy of the debtor. . . . As matters now stand, counsel must advise their clients that they can draw no instrument of this character with the least assurance that its provisions will be respected.'

"Mr. Storey was writing, it is true, shortly after the panic of 1893, and in severe criticism of the so-called 'friendly receiverships' into which so many corporations were thrown during that period. But his commentary is to-day even truer

[2] "The Modern Corporate Mortgage."

than in 1897, though for partly different reasons. In the last twenty or thirty years our courts have shown, paralleling the increasing magnitude of corporate security issues, an increasing tendency to deal with insolvent properties for the benefit of all strata of bondholders, creditors, and stockholders. Only in most extreme cases is a trustee permitted to foreclose and thereby 'freeze out' the junior creditors and the stockholders. Arrangements whereby bondholders and stockholders agree to sell and reorganize without making adequate provision for intervening claimants are looked at askance. In the absence of any statute requiring reorganizations to be conducted under judicial control, the courts are doing their utmost to prevent unfair reorganizations or harsh foreclosures even though trustees are within their legal rights and to delay their enforcement thereof is abstractly unjust—to the trustees and bondholders. So we must deem the default clauses to be the most effective possible under existing circumstances. The circumstances are no reflection on the scrivener's ability, but show him and his mortgage as single factors among many weighty considerations."

Procedure of trustee.—Perhaps it would not be out of place to attempt here a very brief outline of the various steps taken by a trust department, following a default. In these matters the corporate trust department usually comes in close contact with the reorganization department;[3] in fact, in many trust companies, reorganizations and similar kinds of business are in charge of a division of the trust department.

If the default is in the payment of principal or interest it soon comes to the attention of the bondholders. In the case of other defaults one of the first questions which the trustee faces is whether to notify the bondholders. This is a delicate problem and no set rule can be established, but the advisability of communicating with the bondholders should be carefully considered by the trustee and its counsel. Even should it be decided to do so it will often be found difficult to reach any considerable number of bondholders because, if the bonds are outstanding in bearer form, the trustee probably will have difficulty in ascertaining the names and addresses of the holders.

---

[3] See Chapters XIV and XV, pages 187 and 206 respectively.

The default may be of a nature entitling the mortgagor to a "period of grace," and, further, requiring the service on the mortgagor by the trustee, or by the holders of a designated percentage of bonds, of a formal notice, specifying the default, so as to set running this period of grace. The provisions of the "Telephone" mortgage are typical (see Article IX, Section 2 *(c)*, page 372). In that mortgage the period specified is 90 days and the notice to the mortgagor may be given by the trustee in its discretion, but *shall* be given at the direction of the holders of 25 per cent in amount of the outstanding bonds. The period stipulated after due service of notice, as required, must elapse before the trustee may declare the principal of all bonds to be immediately due and payable or otherwise proceed to the enforcement of the remedies provided by the mortgage.

Usually, before matters have progressed very far, some of the larger bondholders (and probably the bankers who sold the bonds) get together and organize what is known as a protective committee. This committee will come to a trust company, often the trust company which is acting as trustee, and request it to act as depositary under a protective or deposit agreement.[4] Such an agreement is entered into between the protective committee, and the holders of such bonds as may be deposited thereunder. The agreement defines the authority which the committee shall have in acting for the bondholders, provides for the payment of the compensation and expenses of the committee, and contains provisions for protecting the interest of depositing bondholders. Acting under this agreement the committee attempts to work out the financial difficulty and, perhaps, to reorganize the company. It sometimes happens (unfortunately in but comparatively few cases) that the committee is able to relieve the situation without actual foreclosure. In most cases, however, the committee has to decide upon foreclosure, preliminary, as a rule, to a complete reorganization. In this event, it usually instructs the trustee to proceed to foreclose the mortgage, and, on behalf of the bondholders who have deposited under the agreement, gives formal instructions to that effect, offering the trustee indemnity as required by the mortgage, for its ex-

[4] Chapter XIV, page 187, contains a more complete discussion of the provisions of a deposit agreement.

penses and liabilities. This indemnity, almost without exception, is given by the committee as a committee and not individually, and is often secured by the pledge of all of the deposited bonds. This form of indemnity is satisfactory, however, only if the deposit agreement contains the customary provision giving the committee the right to pledge the deposited bonds, and if, in the judgment of the trustee, the probable recovery on the deposited bonds will be sufficient to equal its liabilities, disbursements, and fair compensation. In some cases the trustee will require a surety bond or the pledge of other security. During the progress of the foreclosure proceedings, it is usual for counsel for the trustee to confer with counsel for the bondholders' committee, and, so far as is compatible with the interests of the bondholders as a whole, to work in harmony with the committee. The extent to which the trust company will endeavor to meet the wishes of the committee is largely dependent upon the percentage of bonds represented by the committee and whether there is any organized minority of bondholders.

Sale under foreclosure.—Provided a reorganization has been determined upon, it is customary for the bondholders' committee (directly or through an intermediary) to bid for the property at the foreclosure sale and to offer in payment (1) the deposited bonds, in the proportion to which they will be entitled to share in the net proceeds of the sale; and (2) cash for the balance. It is then usual for the committee to organize a new corporation, issue the securities of the new corporation in exchange for the properties of the old, giving to the holders of junior securities such recognition as, in their judgment, the equities justify. The treatment of the junior security-holders is important, as the courts have adopted the policy of carefully scrutinizing this part of a reorganization plan, and are inclined to give a sympathetic hearing to the holders of junior securities who can show that they have not been equitably treated in the plan.

After the sale, the deposited bonds are stamped with an endorsement showing the payment on account out of the proceeds of the sale, and are returned to the committee, although, in certain circumstances, with the approval of the court, stamping of the deposited bonds may be avoided by having them

canceled by the trustee and its receipt given to the committee. It is sometimes possible—provided the court approves—to solve the problem of disposing of the deposited bonds by having them canceled and one temporary bond for the entire amount issued to the committee.

As a formal step, the trustee will obtain a deficiency judgment for the unpaid balance due on the bonds.[5] For the deficiency the bondholders will rank equally with the unsecured creditors of the company as to any unmortgaged assets. A receivership nearly always accompanies a foreclosure, and, if there are substantial unmortgaged assets, the bondholders will receive on the deficiency judgment a further dividend from the receiver's sale. The bonds, if paid in full, are then canceled. Unfortunately, however, full payment seldom results. The deficiency judgment gives to the trustee the right to participate on behalf of the bondholders in any further assets of the company which may be discovered later.

Junior security-holders.—Reference has been made to the treatment of the equity security-holders. In the earlier days, when a first mortgage was foreclosed, the result was nearly always the complete wiping out of the stockholders, and, in some instances, of the junior bondholders. To-day, because of the change in the attitude of the courts, which has already been mentioned, it is usual for the first mortgage bondholders' committee to give the junior security-holders an opportunity to offer a plan of reorganization. If the junior security-holders fail to do so, the first mortgage bondholders, after carefully analyzing the situation, prepare a plan and offer therein such treatment of the equity represented by the junior security-holders, as they believe to be fair and likely to meet the approval of the court. Almost any reorganization involves the raising of cash, and the burden of providing it is practically always placed on the junior security-holders.

Activities during foreclosure proceedings.—During the foreclosure proceedings the trustee will be called upon to sign various notices and petitions, including the trustee's bill

[5] This states the procedure generally, but in New Jersey, for example, a trustee under a corporate mortgage cannot, on foreclosure, obtain a deficiency judgment.

In bankruptcy the bondholder and not the trustee is regarded as the creditor, and should prosecute any claim for deficiency.

of complaint in foreclosure. Perhaps, through one of its officers, it will be necessary for the trustee to testify in the foreclosure proceedings. Eventually it will join in the deed by which title to the property passes to the purchasers. In all these matters, however, the trustee should secure the approval of its counsel before taking action.

Computation of amount due.—The trust department, in connection with the preparation of the bill of complaint in foreclosure, and also at the time of the entry by the court of the order of distribution on foreclosure probably will be called upon to figure the amount due for principal and interest on the bonds. The following example illustrates the calculation in one instance. The laws of the various states relating to usury and the compounding of interest often affect the method of figuring interest on the debt, and counsel's approval of the method used should be secured in each case. In the following illustration the bonds carried 6 per cent interest which had been paid to April 1, 1921. The company had defaulted on one of its covenants under the mortgage. On the application of creditors a receiver was appointed on July 15, 1921, and, on the same date, at the request of holders of the specified percentage of bonds, the trustee declared the bonds due and payable. The order of distribution on foreclosure was entered by the court on July 16, 1923.

NEW YORK COMPANY, INC., 1st MORTGAGE 6% 10-YEAR GOLD BONDS

1. Principal due July 15, 1921, by declaration of the trustee....	$4,168,500.00
2. Interest thereon from April 1, 1921, to July 15, 1921 (3 months and 14 days at 6% on a 360-day basis)	72,254.00
3. Interest on principal from July 15, 1921, to July 16, 1923 (731 days at 6% on a 365-day basis)	500,905.23
4. Interest on interest accrued and unpaid on July 15, 1921, from that date to July 16, 1923 (731 days at 6% on a 365-day basis)	8,682.36
5. Total amount due July 16, 1923	$4,750,341.59

The court, in its final decree of foreclosure and order of distribution, will fix the amount payable upon the outstanding bonds, out of the net proceeds of the foreclosure sale, and direct payment accordingly. The payment is sometimes made by a special master or other officer appointed by the court in the proceedings; in other cases the court will authorize the

deposit of the necessary funds with the trustee and direct it to make the distribution.

Final decree and order.— In the event of the purchase of the mortgage property by the bondholders' committee, the committee will have tendered the deposited bonds in part payment of the purchase price and cash for the balance. Among other things the final decree and order will fix the expenses of the foreclosure and will direct, first, the payment, in cash, of such expenses; second, the acceptance on account of the obligation of the purchaser, of deposited bonds to the extent of their pro rata share in the net proceeds of the sale; and, third, the distribution of the balance of the cash proceeds in the payment of the pro rata share of the undeposited bonds in the net proceeds of the sale. The amount of moneys applicable to undeposited bonds, when paid over to the trustee, should be set aside by the trustee in a separate fund awaiting presentation of such bonds.

The decree and order will further provide for the endorsement on both the deposited and undeposited bonds of a legend to evidence the payment. If the distribution constitutes full payment of the debt represented by the bonds, their cancellation probably will be directed, otherwise the decree and order will direct the return of the bonds to the holders after appropriate endorsement. The following is an example of such an endorsement:

> Paid on account of the principal of and interest on the within bond the sum of $217.37656, being its *pro rata* share of the proceeds of the mortgaged property sold on September 14, 1923, by virtue of an Amended Foreclosure Decree entered *nunc pro tunc* as of July 26, 1923, in the Consolidated Cause in the District Court of United States for the Southern District of New York entitled "National Trust Company, as Trustee, Plaintiff, against New York Company, Inc., Defendant, in Equity No. 1234.
>
> Dated ——
>
> CHARLES H. GRAVES
> Special Master

Final distribution.— The payment of subsequent distributions, if any, is likewise evidenced by appropriate endorsement upon the bonds. When the final payment has been made it may be preferable, in place of stamping and returning the bonds to their respective owners, to cancel and hold them for cremation. In that event the trustee's receipt would be issued to the bond owner. This method should be adopted,

however, only with the approval of the court. The reasons which may make this procedure desirable are: (1) to save the insolvent estate the expense which is incident to stamping bonds; and (2) to make it impossible for anyone to efface the stamp and, perhaps, sell the bond to some unsuspecting person.

Disposition of endorsed bonds.—One of the annoying results of many reorganizations is that the committee often requests the depositary or the trustee to hold the endorsed bonds in the hope of further recovery which is extremely remote. In time, the committee disbands and its members die or become unfamiliar with the details of the reorganization, and a number of years later, when the trust company desires to clear its vaults of a large accumulation of these bonds, it finds no one qualified to give it instructions. The modern trust company is very careful, upon completion of each reorganization, to secure explicit instructions, so that within a reasonable time it may be freed of the burden of carrying these practically worthless bonds.

General.—In closing this chapter it may be well to repeat that, while every careful trust company makes it a point before accepting a corporate trusteeship to satisfy itself that the mortgagor is organized in good faith and has at least a reasonable chance of success, the trustee in no way gives any assurance that the bonds will be paid, or makes any warranty as to the financial standing of the mortgagor. Unfortunately, it is true that some investors purchase bonds relying upon the standing of the trustee, and, however unfounded this theory may be, they feel that some blame must attach to the trustee in case the mortgagor fails. This feeling is never more evident than in the trustee's correspondence following a default, and emphasizes the need for careful investigation before the acceptance of any corporate trusteeship. If, in replying to such criticism, a trustee will be at some pains to make its status in this regard entirely clear, it will not only be defending its own good name, but will be doing its part in the very necessary work of educating the investing public.

Chapter XI

THE TRUSTEE CLAUSES; MISCELLANEOUS PROVISIONS

Acceptance of trust.—The article "Concerning the Trustee" usually opens with the statement that the trustee accepts the trust under the terms and conditions stipulated in the mortgage. Following this, come the so-called "protective" clauses.

Examining the protective clauses.—In the course of his examination of the draft of a mortgage the careful trust officer will give particular attention to any provisions relating to the duties and responsibilities of the trustee. These will be found at different points throughout the mortgage, but it is customary to group under one heading a statement of the many things in respect to which the trustee shall not be liable.[1] The trust officer will wish to have these protective clauses broad enough to cover all matters in which, judging from the experiences of his company and fiduciaries generally, the trustee should assume no liability. Some trust companies go so far as to prepare printed copies of a standard article of this kind, to meet their particular requirements, which they endeavor, whenever possible, to have incorporated verbatim in the proposed mortgage.

Liability of trustee.—Anyone inexperienced in corporate trust practice, after reading the "protective" or "immunity" clauses in any modern mortgage would very naturally assume that the liability or risk assumed by a trust company as trustee under such an instrument was slight, to say the least. It is true that these provisions have been gradually evolved by the ablest of trust company counsel to limit, so far as is possible, the liability of trust companies as trustee. In reaching anything like a clear conception of the situation, however, the law and the attitude of the courts must be considered,

[1] This reference is to the text of the "Telephone" mortgage (p. 384 et seq.).

and here we find a very different situation. The law has always held a fiduciary to a very strict accountability for his acts. The trust company of to-day has far-reaching sources of information and a broad experience, and the courts are inclined to deal even more strictly with a trust company than with an individual as trustee. Consequently, the situation is far from being as secure, from the trust company's point of view, as it would seem from a consideration, merely, of the protective provisions.

Purpose of immunity clauses.—The fact of the matter is that trust company counsel have attempted to write into the corporate mortgage, for what they may be worth, every possible safeguard against risk attendant upon all action required of the trustee, except acts of bad faith. But the trust officer who goes ahead blindly relying upon these provisions is certain, sooner or later (probably sooner), to cause his company financial loss and at the same time to bring about a serious loss to its prestige.

The situation may perhaps be summarized somewhat as follows: first, the trust company before the execution of the mortgage should see that the broadest possible protective provisions are inserted; second, throughout the administration of a trust, whenever a question of responsibility or liability of the trustee arises, it should carefully examine the protective clauses and endeavor to proceed in conformity with all pertinent provisions; and last, but most important of all, the trustee should never overlook the fact that these provisions are not necessarily conclusive, and, therefore, all doubtful questions should be passed upon by counsel before action is taken.

Economics of situation.—The whole problem of responsibility under a corporate mortgage, in the last analysis, resolves itself into a question of compensation. "Theoretically the trustee ought to have an active supervision of the trust; but practically the liabilities which in such case it would assume would be altogether out of proportion to the compensation which mortgagors are able or willing to pay."[2] The modern

[2] Francis Lynde Stetson, "Some Legal Phases of Corporate Financing, Reorganization and Regulation," p. 52.

trust company has an experienced staff and employs able counsel, and, if the mortgagor is willing to pay the expense and the bankers who underwrite the issue and usually select the trustee are willing that it should do so, the trust company is really equipped to assume a materially greater responsibility than is now the general practice. A number of trust officers and trust company counsel feel that a greater measure of safety for the bondholder, both before and during reorganization, could be secured if the trustee was authorized to perform more active duties. The problem, however, remains one of policy with the bankers, and of economy and dislike of outside supervision on the part of the debtor corporations.

Customary provisions.—Some of the points usually covered in the article under discussion are as follows:

The trustee shall have no responsibility for the proper recording, filing or refiling of the mortgage, and may certify and deliver bonds prior to recording or filing.[3]

The trustee is entitled to reasonable compensation for all of its services (not limited to the compensation of trustees of an express trust as provided by law) and to reimbursement for all of its proper expenses, including the services of its counsel and agents, and, for such compensation and expenses, as well as for any liability which it shall properly incur, the trustee is given a lien on the trust estate, prior to the lien of the bonds.

The trustee shall be fully protected in any action which it may take pursuant to any proper instrument, which it believes to be genuine.

Any action taken by the trustee pursuant to authority from a bondholder shall be binding upon all future holders of the same bond or of any bond issued in exchange therefor.

In the administration of the trust the trustee may, at the expense of the mortgagor, consult with counsel, and be protected for any action taken in good faith in accordance with the opinion of such counsel.

The trustee may also, at the expense of the mortgagor, employ all necessary attorneys, agents, or employees, and

[3] However, see dicta in Green *v.* Title Guarantee and Trust Company, 123 Misc. (N. Y.) 731.

shall not be answerable for their misconduct if they are selected with reasonable care.

The trustee shall not be liable for the exercise of any discretion or power granted to it by the mortgage, nor for anything except willful misconduct or gross negligence.

The trustee shall not be liable for the use of any bonds properly delivered under the mortgage, or for the application by the company of the proceeds thereof.

All recitals, except the trustee's certificate, shall be taken as made by the mortgagor and not by the trustee.

The trustee assumes no responsibility for the validity of the mortgage or of the bonds or for the security therein provided.

The trustee may become a bondholder with the same rights as though it were not trustee.

The trustee shall not be required: (1) to take any action to enforce the trusts under the mortgage, which in its judgment might involve it in expense or liability, unless indemnified to its satisfaction by one or more of the bondholders; nor (2) to take notice of any default, until notified in writing by the holders of a specified percentage of the outstanding bonds; nor (3) to take any action in respect of a default until requested in writing so to do by the holders of a specified percentage of the outstanding bonds and indemnified to its satisfaction. It is usually stated, however, that these provisions are for the protection of the trustee, and do not affect any discretion or power which the trustee may otherwise have.

The trustee need not recognize any person as a bondholder, until the bonds are presented for inspection to the trustee, and the title thereto, if disputed, established to the satisfaction of the trustee.

If the trustee, pursuant to the terms of the mortgage, shall enter upon or operate all or any part of the mortgaged property it shall not be individually responsible for any debt or liability incurred.

It shall be no part of the duty of the trustee to see to the payment of any tax or other charge against the mortgaged property, nor to see to the insurance or maintenance.

Without intending to detract from the importance of any of the provisions just referred to, it might be well to invite particular attention to two very practical points affecting the

trustee which frequently are covered in this part of the mortgage.

Reliance upon certificate.—It is desirable, in dealing with all matters where the mortgage does not make specific provision as to the evidence upon which the trustee may rely in acting under the mortgage, or in refraining from acting, that the trustee should be permitted to rely on a certificate of the company executed in a given manner, for example, by two specified officers of the company under its corporate seal. This provision is most important from the viewpoint of the trustee and is, at times, of material assistance in meeting a situation which otherwise might be most embarrassing.

Interest on cash balances.— Provision is usually made for the payment of interest by the trustee on funds in its hands, and the statement made that, in the absence of default, the company shall be entitled to receive all such interest. If, in the draft of the mortgage, this section attempts to specify the rate of interest which shall be paid by the trustee, it is usually objected to by the trustee on the theory that the mortgage runs for a long period of years, and it is not good banking practice for a financial institution to contract to pay a specified rate of interest over a long term. In fact, the trust officer should take care to see that this provision does not conflict with the practice of his banking department. From the trustee's point of view, the mortgage provisions will be satisfactory if phrased in keeping with either clause quoted below:

"The Trustee will pay to the Company, from time to time, interest on any cash balances held by the trustee on deposit hereunder, at such rate, if any, as is customarily allowed by it on similar deposits.

"Any moneys received by the Trustee under any provisions of this indenture may be treated by it, until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest save as may be agreed upon between the Company and the Trustee."

Resignation or removal of trustee.—This article generally also contains the provisions relating to the resignation or removal of the trustee and the appointment of successor trustees. It is important merely that these provisions be perfectly

clear and workable, so that if it becomes necessary or advisable for the trustee to resign the trust, there shall be no difficulty in accomplishing the resignation. The more modern mortgages also provide that any financial corporation, resulting from a merger or consolidation to which the trustee shall be a party, shall, if qualified to accept such a trust, become successor trustee under the mortgage without further action on the part of the mortgagor, the trustee, or the successor trustee.

In the event that a trustee resigns or is removed and a successor is appointed the practice is to turn over to the new trustee all securities, cash, and executed counterparts of the mortgage and any supplemental indentures. It is not customary for the resigned trustee to relinquish documents supporting acts performed by it in the course of its administration of the trust or to turn over its records to the new trustee, although the new trustee should be furnished with an appropriate certificate of the status of the trust.

Individual trustee.— If there be an individual co-trustee, appropriate provisions will be included in this part of the mortgagee for the appointment of a successor individual trustee in case of the death, resignation, or incapacity of the individual originally appointed. Frequently an officer of the corporate trustee serves as co-trustee, and in such cases it is usual to permit the appointment of his successor by the president or board of directors of the corporate trustee. It is wise to provide that the individual trustee may appoint, as his attorney in fact, the bank or trust company named as corporate trustee. Sometimes the individual trustee, immediately upon the acceptance of the trust, executes a power of attorney pursuant to this provision. This enables the corporate trustee, in the absence of the individual trustee, to conclude matters of importance which otherwise might be delayed.

If no individual trustee be appointed by the mortgage it is customary to provide that such an appointment may be made by joint action of the company and the corporate trustee in case any necessity arises for such an appointment at a later time. This particular provision is intended to cover the more or less modern practice of certain of the states in prohibiting or restricting, by statute, the performance of trust

functions, within their territory, by corporations organized in other states.

Miscellaneous provisions.—It is customary to insert in each mortgage an article of miscellaneous provisions which cover a variety of topics. We shall mention briefly a few of the more familiar provisions which come under this heading.

Merger and consolidation.—Nearly every mortgage provides for the contingency of the mortgagor merging or consolidating with another company or leasing or selling its property as a whole. The mortgage of the Telephone Company covers this point in Article VII.[4]

It is usual to provide that nothing contained in the mortgage shall be construed as prohibiting the company from merging or consolidating with any other company which is legally authorized to carry on its business, nor from selling or leasing its property as a whole on such terms as will not weaken the security of the mortgage. The provision is further made that any such lease shall be subject to termination by the company or the trustee upon an event of default under the mortgage, and by any purchaser of the property of the mortgagor at any sale, under the power of sale conferred by the mortgage or under judicial proceedings. The reasons for such limitations upon the terms of an authorized lease are evident.

There is, in connection with the merger and consolidation provisions, a further logical requirement that any successor company through consolidation or merger shall execute and deliver to the trustee a proper instrument expressly assuming the obligations of the mortgagor. Ordinarily, the mortgage will go one step further and provide that, upon the proper filing of such an instrument, the successor shall be fully substituted for the original mortgagor and shall have all of its rights, as well as its obligations under the mortgage including the right to issue bonds.

In actual practice these provisions of a mortgage are seldom invoked. However, unless the article in question clearly specifies the evidence on which the trustee may rely as to the sufficiency of the instrument of assumption or of

[4] See page 365.

the terms of lease or sale, the trustee will often find itself in a rather difficult position. For this reason it is good policy for the trustee in considering the mortgage prior to execution to make sure that the article, if included, makes adequate provision for the guidance and protection of the trustee. The usual method is to provide that if any question arises under the article, the trustee shall be fully protected in acting upon the opinion of any counsel selected by it. Some mortgages state that the counsel selected by the trustee may be of counsel for the company. The basis for permitting the trustee to accept the opinion of the company's counsel is that the legal examination involved in a merger, sale, or lease is necessarily long and expensive, and as counsel for the company has passed on the transaction in behalf of the company, the same counsel can render the required opinion much more expeditiously and cheaply than independent counsel. Assuming, that all of this is true, the situation is one where, under ordinary circumstances, the bondholders are entitled to the protection of an independent opinion, and if called upon to act in such a case the trustee will find itself in a more comfortable position if its mortgage specifically requires the opinion of independent counsel.

Some mortgages contain special provision in respect of subsidiary companies. Section 3 of this article[5] in the mortgage of the Telephone Company is an example.

Evidence of ownership of bonds.—It is usual to provide in a separate article[6] for the evidence upon which the company and the trustee may rely as to ownership of bonds. The ownership of registered bonds is indicated by the bond registry. In the case of coupon bonds the trustee is permitted, as a rule, to accept, as evidence of ownership, certificates executed by the trust companies, banks, bankers, etc., satisfactory to the trustee. This article is purely formal and of little interest to the trust officer except in the event of bondholders meeting or other concerted action by bondholders.

Defeasance.—Unless, as in the "Telephone" mortgage,[7] the provisions as to defeasance appear in the preamble, they

[5] See page 367.

[6] See Article X of the "Telephone" mortgage, p. 383.

[7] See the "Telephone" mortgage, p. 339.

are usually set forth in a separate article toward the end of the mortgage.

When the bonds have been paid at maturity or provision made for their retirement through redemption or otherwise, the mortgagor probably will request of the trustee a duly executed certificate of satisfaction and discharge of the mortgage which it can record in all jurisdictions in which the mortgage is of record. The mortgagor will also expect the trustee to return all securities pledged or deposited with the trustee under the mortgage and any cash which may have been placed with the trustee, except that which the trustee will be required to pay out conformably with the mortgage provisions. The points to be checked by the trustee at the time are enumerated in the Mortgage Satisfaction Guide (Form 36).

Form 36.—Mortgage Satisfaction Guide.

Corporate Trust Department. Date Executed ————

Mortgage Satisfaction Guide.

Title of Account.....

Issue .....

Procedure to be observed in satisfying above Indenture and closing records. Enter the following symbols in the column at the left to indicate action taken with respect to each requirement:

V = Fulfilled. F = Follow-up card prepared. O = Not applicable.

	I. Arrange with Commission Division to collect unpaid fees and disbursements of Bankers Trust Company and of counsel, and to propose satisfaction fee.
	II. Ascertain that all bonds or notes and coupons are accounted for and/or that arrangements have been made for their retirement.
	III. Determine action to be taken with respect to any demands or notices served upon Bankers Trust Company claiming a lien upon collateral or other property subject to above Indenture at time of satisfaction.
	IV. Determine disposition to be made of the following: *(a)* Cash on hand. *(b)* Collateral held. *(c)* Insurance policies on file.
	V. Obtain opinion of counsel approving satisfaction.
	VI. Enter Execution of instrument in "Documents Executed" record.
	VII. Notify Co-Trustee and Co-Paying Agents (unless previously informed).
	VIII. Ascertain that usual report has been sent to Development Department.

Form 36.—Mortgage Satisfaction Guide (continued)

IX. Prepare memos for:
- *(a)* Corporate Trust Department (in duplicate).
- *(b)* Coupon Paying Division.
- *(c)* Bond Registration Division.
- *(d)* Statistical Department.
- *(e)* Document Files.
- *(f)* Trust Files.

X. Remove and destroy any cards in the following files:
- *(a)* Maturity.
- *(b)* General.
- *(c)* Trust Requirements.
- *(d)* Vault Index (when all securities are released).

XI. Stamp the word "Satisfied" and date of satisfaction on the following records:
- *(a)* Index card in window file. Transfer card to closed-out file.
- *(b)* Index card in officer's desk file.
- *(c)* History of Trust sheet.
- *(d)* Record of Bonds Issued.
- *(e)* Securities Held Ledger sheet.

XII. Transfer to closed-out binder auxiliary records which have been completed.

XIII. Arrange for cremation of the following:
- *(a)* Canceled bonds or notes.
- *(b)* Unissued bonds or notes.
- *(c)* Coupons.

Procedure completed,

Date.....By.....

(This record, when completed, should be filed in the Document Folder.)

Satisfaction guide.—Item II on the Guide refers to accounting for all bonds and coupons. In addition to the deposit by the company of cash equal to the principal of all outstanding bonds, interest to date of maturity or redemption, and the premium on the bonds (if any), the trustee should require that funds be placed with it for all past-due coupons not surrendered.

Old coupons.—In the case of some old mortgages it is extremely difficult for the mortgagor to secure all of the matured coupons. However, unless the trustee receives satisfactory evidence that the company has made payment for coupons which may be missing, it is well within its rights in requiring an equivalent cash deposit. Depending on the period of years which may have elapsed since the due date of the coupons

the trustee, acting under advice of counsel, may be willing to accept a bond of indemnity in place of the missing coupons.

Cremation.—As soon as practicable after the satisfaction of the mortgage, the trustee, with the company's permission, should arrange all bonds and coupons for cremation. The cremation should include not only paid and canceled bonds and coupons, but unissued bonds (see Item XIII of Guide). It is highly important that both the company and the trustees have an accurate record of cremated securities. To this end it is desirable that the trustee list all securities to be cremated on a certificate (Form 37). A full description of the securities should appear on the cremation certificate, including the bond or coupon numbers, the number of pieces, the maturity date, and the principal amount.

Witnesses.—The mortgagor may wish to have a representative present when the securities are cremated. Railroads are required by the Interstate Commerce Commission to designate a representative for this purpose. The trustee should always have at least two witnesses of its own at any cremation of securities.

Periodical cremation of securities.— Corporations which have large bond issues outstanding find it convenient to deliver paid and canceled coupons and bonds to the trustee from time to time and arrange for periodical cremations. This prevents an accumulation of canceled securities and facilitates the final "check-up" when the mortgage is satisfied. Corporate trustees handling a considerable volume of canceled securities frequently establish, under control of the corporate trust department, a separate verification division for attending to audit and cremation work.

Definitions.—It is quite usual to find several sections of a mortgage (particularly in the larger and more involved mortgages) devoted to a series of definitions explaining the meaning of certain terms used in the mortgage, for example, "net earnings," "underlying mortgages," "permanent additions," "engineer's certificate," and so on. These definitions may be very useful in settling points on which the parties to the mortgage may be at variance.

Form 37.

Cremation Affidavit Certificate.

STATE OF NEW YORK }
County of New York } ss.

.....

and....., being duly and severally sworn, do each severally depose, certify and say:

We, ...

and.....have this.....day of.....

19 , at No. 16 Wall Street, in the City and State of New York, in the presence of one another, destroyed by burning to ashes the property below described in detail.

Sworn to before me this
Day of.....19... }

.....

.....

Accepted

BANKERS TRUST COMPANY

.....
Asst. Secretary

.....
Representing.....

.....
Representing BANKERS TRUST COMPANY
Corporate Trust Dept.

.....
Representing BANKERS TRUST COMPANY
Coupon Verification Dept.

Supervision by bankers.—Occasionally we find a mortgage in which the bankers who have floated the issue retain a certain amount of supervision of the mortgagor company. For example, the company may covenant to furnish the bankers with financial statements, or it may agree to make appointments of accountants or appraisers subject to the bankers'

approval. The extent of these supervisory relations of the bankers should be clearly expressed.

Immunity of stockholders, etc.—Some reference is also made in a mortgage to the immunity of stockholders, officers, and directors of the company. This emphasizes the corporate nature of the obligation and is designed to relieve the owners of the company and the management from personal liability.

Testimonium; signatures; acknowledgments.—The mortgage closes with the signatures and seals of the parties to the instrument, the signatures of witnesses to the execution, and the acknowledgments in form required by the jurisdictions in which the mortgage is to be recorded. The regularity and sufficiency of the mortgage in these respects are matters as to which the trustee will be guided by the advice of its counsel. The trustee, however, should see that the officer signing the mortgage on its behalf and the officer attesting the corporate seal affixed to the instrument are duly authorized by its board of directors to perform these acts.

Chapter XII

EQUIPMENT TRUSTS; COLLATERAL TRUSTS; UNSECURED ISSUES

Equipment trusts.—This is a special form of trust which has grown out of the necessity for the purchase of railroad equipment on credit. Equipment trust agreements differ in form from corporate mortgages, although they contain many of the same provisions. We shall examine, briefly, into some of the special provisions relating to the transactions involved.

There are in use two general forms or plans of equipment trust:

1. *Philadelphia plan.*[1]—The essence of this plan is that the equipment is leased to the railroad and the railroad pays for it through "rental" payments to the trustee, such rentals being applied to the corresponding maturities of principal and "dividends" of certificates issued under the plan and held by investors.

2. *Conditional sale plan.*—Here the equipment is conditionally sold to the railroad, the trustee retaining ownership (conditional vendor's title), until all the installments of principal and interest have been paid.

There are various methods of accomplishing either plan, the details of which need not be gone into for present purposes.

Reasons for Philadelphia plan.—The reason for the adoption of the Philadelphia plan (which rightfully should be called the "Pennsylvania plan") was the state of the law in Pennsylvania in regard to conditional sales. The Pennsylvania courts had uniformly refused to sustain the title of a conditional vendor who had surrendered possession to his vendee, as against the claims of creditors of, and purchasers from, the vendee without notice of the conditional vendor's claims. Pennsylvania, in the days when the above decisions were made, likewise had no general system for recording or filing chattel mortgages. Bankers and their counsel, there-

[1] A Philadelphia Plan equipment trust is set forth on page 395 et seq.

fore, arranged to have the equipment not sold but leased with the privilege to the lessee of purchasing at the expiration of his lease. The lessor's title not having passed, the presumption in favor of creditors of the railroad that the railroad owned the equipment was not available to them.

In nearly all of the states of the United States substantially identical statutes have been passed during the last forty years whereby the conditional sale arrangement is expressly validated in respect of railroad equipment. Many of these statutes also permit the lease plan or "Philadelphia plan" and the chattel mortgage arrangement. In some states, however, the Philadelphia plan still affords the best protection to the interests which furnish the equipment, and in those states the Philadelphia plan is still the most practicable for use. In other instances also the Philadelphia plan is doubtless employed, because investors and distributing houses are familiar with it.

Cash deposit with trustee.—In most cases the trust, under either plan, is executed before the equipment is manufactured. The railroad agrees to pay a percentage of the cost, usually 20 per cent, in cash, and the balance with the proceeds of the equipment notes. The cash payment by the railroad and the proceeds of the notes will be deposited with the trustee, and used pursuant to the terms of the trust agreement in paying for the equipment as it is delivered by the manufacturers. The agreement will usually provide for the appointment of inspectors to inspect the equipment on delivery and, if satisfactory, to accept it on behalf of the railroad, and so certify to the trustee. Further provision will be made in the agreement for the payment by the trustee of the cost of the equipment upon receipt of: (1) a proper invoice from the manufacturer specifying the equipment and its cost (which must correspond to the prices stipulated in the equipment trust agreement or the purchase contracts); (2) a bill of sale in favor of the trustee; (3) the inspector's certificates; and (4) opinion of counsel satisfactory to the trustee that the bills of sale are valid and effective to vest title to the equipment in the trustee, free of all liens and encumbrances.

Covenants of railroad.—Under the familiar equipment trust the railroad company, among other things, undertakes:

(1) to pay at their respective maturities, the equipment obligations, and the interest thereon; (2) to fasten and to keep on each piece of equipment a metal plate showing that the trustee is the owner or lessor of such equipment, although the railroad also may letter the equipment with its name or other marking to indicate its interest therein; (3) to maintain the equipment in proper condition and repair, and replace at its expense any equipment destroyed; (4) properly to insure all equipment in favor of the trustee; (5) to file periodically with the trustee a statement of the location and condition of all equipment.

Comparison between Philadelphia plan and conditional sale arrangement.—Equipment trust certificates issued under a "Philadelphia plan" are usually signed by two officers of the trustee and its corporate seal is affixed. A statement is contained in the certificates that the amounts due thereon are payable only out of "rentals" to be received from the railroad. The coupons attached to the certificates are referred to as "dividend warrants." Payment of principal and "dividends" is guaranteed by the railroad company in the agreement and, sometimes, by endorsement on each certificate.[2]

Issues under contracts of conditional sale usually are designated as "equipment notes" or "equipment bonds." These are signed by the railroad and certified by the trustee in the usual manner.

Most equipment issues mature in equal periodical installments over a period of from ten to fifteen years. For example, an issue of $1,500,000 might be payable over a fifteen-year period at the rate of $100,000 per year. Certificates Nos. 1 to 50 at $1,000 would probably mature six months from the date of issue; Nos. 51 to 100 in one year, and so on.

As in the case of a mortgage the trustee is required, upon complete payment by the railroad of all of its obligations under the trust, to execute an appropriate instrument canceling the trust and assigning the equipment to the railroad.

---

[2] In a decision of the Supreme Court of the United States (Lederer v. Fidelity Trust Company, 267 U. S. 12), it was held that equipment trust certificates issued under the Pennsylvania plan are subject to the United States Documentary Tax as "certificates of indebtedness." This decision was the result of a suit to recover the cost of revenue stamps affixed to railroad equipment certificates.

The conditional sale agreement has in recent years been applied to the purchase of many things other than railroad equipment, for instance, vessels of various kinds, equipment for industrial plants, and so forth; but the general principles involved are the same in each case.

Collateral trust indentures.— In Chapter IX we discussed typical provisions in respect to stocks or bonds pledged with a trustee as part of the mortgage security. In most cases these provisions also apply with equal force to securities pledged and deposited with a trustee under a collateral trust indenture.

The following statements regarding collateral indentures are quoted from an address of Mr. Francis Lynde Stetson's before the Association of the Bar of the City of New York.[3] "Ordinarily, the stock pledged under such agreements is the stock of some company or companies subsidiary to the pledgor, and the bonds pledged are either those of such subsidiary company, or long-term mortgage bonds of the obligor pledged as security for its own short-term notes. Security of the latter class is resorted to when short-time money is obtainable on better terms than long-time money. Accordingly, the corporation issues a series of notes payable within a few years and secured by the pledge of its own long-term mortgage bonds, the expectation being that such bonds may be sold on favorable terms at the maturity of the notes, which then may be paid from the proceeds. Unless secured by mortgage such pledged bonds, being merely the obligations of the pledgor, would not constitute collateral security for the pledgor's own notes."

Frequently, however, collateral trust issues are not secured either by the pledgor's bonds or its subsidiary's stocks, but by securities of companies which the pledgor does not control, but in which it may have a substantial interest. In such case, the trustee will, perhaps, be authorized by the indenture to collect the income from the pledged securities and apply it to the payment of interest on the collateral bonds. An adjustment is then made with the pledgor at each interest date, the trustee paying over to the pledgor the excess, if any, of

[3] "Some Legal Phases of Corporate Financing, Reorganization and Regulation," p. 57.

income collected over current interest to be paid on the collateral bonds, or, if there is a shortage, receiving from the pledgor funds sufficient to meet such interest.

In collateral trust indentures of this type where the collateral is diversified, there is no point to inserting provisions such as were discussed in Chapter IX in respect to protecting the trust estate from possible loss of stock control of a company. On the other hand, the indenture probably will permit substitution of collateral, within a certain range of securities, merely on the certificate of certain officers of the pledgor, provided the new collateral is of market value equal to the collateral withdrawn.

Unsecured issues.— Generally speaking, trust agreements providing for the issue of unsecured obligations, such as notes or debentures, are simpler than either mortgages or collateral trust indentures. The one article which is apt to be at all lengthy is that dealing with the covenants of the debtor. Outside of the financial strength of the debtor these covenants represent the only safeguard of the noteholders, and the bankers who underwrite the issue usually will insist upon inserting such covenants as, in their opinion, will sufficiently strengthen the issue to make it attractive. Quite frequently the issuing corporation covenants that, if a subsequent mortgage is placed on its property, the debentures will be secured by the mortgage equally with the subsequent issue. Debentures and other unsecured issues often are given the privilege of conversion into stock of the issuing company at a given figure. The process of conversion will be discussed in the next chapter.

Chapter XIII

MISCELLANEOUS TRUST FUNCTIONS

Miscellaneous functions.— Corporate trust departments of banks and trust companies perform many functions which do not come under mortgages naming the institutions as trustees, although a substantial part of this miscellaneous business is a direct outgrowth of mortgage appointments.

Interim certificates.— Interim certificates (also called interim receipts) are issued in lieu of temporary bonds, in cases where it is desired to place an issue on the market before it is possible to execute the mortgage or issue bonds thereunder. Ordinarily, the company which is to issue the bonds, and the underwriters who are to sell the issue, or, if an underwriting syndicate has been formed, the syndicate managers, will join in a letter of instructions to a bank or trust company as depositary (usually the institution which is to act as trustee under the mortgage) directing the depositary to issue its interim certificates representing a specified principal amount of bonds of the proposed issue, to, or upon, the written order of the underwriters; but only against the deposit with it of a specified amount in cash per $1,000 principal amount of bonds. The letter of instructions will further direct the depositary to hold the cash for the benefit of the holders of its interim certificates until the mortgage shall have been properly executed and it shall have received bonds of the proposed issue in form available for distribution in exchange for the outstanding "interims." The letter will further direct the disposition of the cash deposit to be made by the depositary on receipt of such bonds. Usually, that portion of the deposit representing the price at which the bonds were sold to the underwriters, with any interest allowance, will be paid to the company, and the balance, representing the underwriters profit, will be paid to the underwriters.

It is good practice for the letter of instructions to specify a date, on or before which the bonds, in form available for

distribution, must be delivered to the depositary, and to provide that if the bonds are not so delivered the depositary shall use the cash in its hands to make payment of the amount specified in the interim certificates to the holders thereof, upon surrender to it of such certificates. It is important for the depositary to see that the amount of cash deposited with it will be sufficient to make the required distribution to the holders of its interim certificates, or that provision is made to its satisfaction, for the deposit of any additional cash required. As the obligation under the interim certificate is directly that of the depositary, an institution issuing its certificates on any terms other than the deposit of the full amount of cash which it might be required to pay out under any circumstances is, in effect, granting credit and should be guided accordingly.

At times the letter of instructions will provide that the depositary shall pay over the cash to the company and the underwriters upon execution of the mortgage and receipt by the depositary of a single temporary bond, to be held pending receipt of definitive bonds in form available for distribution. This may prove to be an unsatisfactory arrangement, as delay in delivery of the definitive bonds beyond the date specified in the outstanding receipts would place the depositary in an embarrassing position.

The position of an institution under an issue of interim receipts is dangerous, unless all contingencies are fully covered, and the form of its receipts and the letter of instructions meet the legal and practical requirements.

A typical letter of instructions and interim receipt are shown below:

National Trust Company,
200 Wall Street,
New York City.

New York, March 22, 1926.

Dear Sirs:

1. Pursuant to an agreement dated March 8, 1926, between Johnson Brothers and Read & Co. (hereinafter referred to collectively as the bankers) and Amalgamated Company (hereinafter referred to as the corporation) said corporation agreed to cause all of its assets to be sold to Amalgamated Corporation, a corporation to be organized under the laws of the State of New York (hereinafter referred to as the new corporation) and agreed to cause said new corporation to create, issue, and sell to the bankers $6,000,000 principal amount of its First and Refunding Mortgage Twenty-Year 6 per cent Gold Bonds, Series "A", to be dated as of March 1, 1926, to mature March 1, 1946, and to bear interest at the rate of 6 per cent per annum from March 1, 1926, all of

which will be issued under an indenture to be dated March 1, 1926, between said new corporation as mortgagor and your company as trustee.

2. It was agreed between the parties to said agreement that pending the consummation of various legal proceedings thereby contemplated, the bankers may cause you to issue interim receipts exchangeable for bonds, when, as, and if, issued and received by them and delivered by them to you. Acting pursuant to said provisions, the bankers hereby request you to issue interim receipts (in the form hereto attached) calling for the above-mentioned bonds, to, or upon, the order of the bankers, or any of them, from time to time for a principal amount not exceeding in the aggregate $6,000,000 upon the deposit with you of cash at the rate of $1,000 for each $1,000 principal amount of interim receipts, plus accrued interest at the rate of 6 per cent per annum upon said principal amount from March 1, 1926, to the date of such deposit. Receipts are to be in the denominations of $1,000 and $500 principal amount.

3. The cash so deposited with you is to be held for the benefit of the holders of interim receipts until the above-mentioned bonds in definitive form (or a temporary bond or bonds exchangeable for definitive bonds when prepared), together with a copy of opinion of counsel for the bankers to them approving the creation, issue, and sale to the bankers of the bonds, are delivered to you up to a principal amount equal to the amount called for by the outstanding interim receipts, after which the cash so deposited with you, together with the interest you allow thereon, is to be paid over by you as follows:

(a) You shall pay to and upon the order of the bankers out of the cash so deposited with you 5 per cent of the principal amount of said interim receipts, being the sum of $300,000.

(b) You shall pay to or upon the order of the new corporation an amount equal to 95 per cent of the principal amount of said bonds, plus all money deposited with you representing accrued interest as aforesaid, together with the amount of the interest allowed by you.

4. In case any holder of an interim receipt proves to your satisfaction that such interim receipt has been lost, stolen, mutilated, or destroyed, then, upon receipt of indemnity satisfactory to you and to the new corporation, and, if mutilated, the surrender of the mutilated receipt, you are authorized to issue to such holder a new interim receipt in lieu of the interim receipt so lost, mutilated, or destroyed.

5. In the event that the above-mentioned bonds and opinion of counsel are not delivered to you on or before May 17, 1926 (or on or before such later date, if any, as the bankers may fix and indicate to you in a writing signed by them and delivered to you prior to May 17, 1926), in a principal amount equal to the principal amount of interim receipts issued by you, you are authorized at any time within two days thereafter to give notice by publication once a day for two successive days in a daily newspaper published in the Borough of Manhattan, City of New York, that you will, upon surrender of such interim receipts, refund to the bearers thereof an amount in cash equal to $1,000 for each $1,000 principal amount of interim receipts then outstanding, together with interest at the rate of 6 per cent per annum upon the principal amount of such outstanding interim receipts from March 1, 1926, to the last day of such publication. In the event of such non-delivery on or before May 17, 1926 (or such later date, if any, as may be fixed by bankers as above provided), the corporation agrees to pay to you, or cause to be paid to you within two days thereafter, for the benefit of the holders of such outstanding interim receipts, a sum equal to the difference between interest at the rate of 6 per cent per annum on the principal amount of bonds represented by such

outstanding interim receipts and the interest allowed by you upon the moneys deposited with you hereunder (which shall be at the rate or not less than 2½ per cent per annum) from the respective dates of issue of such interim receipts to the last day of such publication. The bankers hereby jointly and severally guarantee payment by the corporation of said sum as and when the same shall become due as aforesaid. You are hereby authorized to redeem such interim receipts upon the terms aforesaid out of the moneys deposited with you and received by you from the corporation (or the bankers) as hereinabove set forth, including the interest allowed by you on moneys deposited hereunder.

6. All your expenses in connection with the trusteeship, including the preparation and issuance of the interim receipts and the bonds, are to be paid by the corporation or the new corporation. You shall not be responsible in any manner whatsoever for the recitals of fact and the covenants and agreements of the corporation or the bankers herein or in the agreement abovementioned contained, all of which are made by the corporation and/or the bankers solely. You may employ agents or attorneys in fact and shall not be answerable for the default or misconduct of any agent or attorney appointed by you in pursuance hereof if such agent or attorney shall have been selected with reasonable care. You may advise with counsel to be selected and employed by you at the reasonable expense of the corporation, and you shall be fully protected in respect to any action hereunder taken or suffered in good faith by you in accordance with the opinion of such counsel. You shall not be under any obligation to take any action toward the execution or enforcement of the trust hereby created or to institute, appear in, or defend any suit in respect hereof, unless, as often as required by you, you shall be indemnified to your satisfaction against any expenses or liability connected therewith. The corporation and the bankers hereby jointly and severally agree to reimburse you for any liability or damage you may sustain or incur in the premises.

Yours very truly,

AMALGAMATED COMPANY,
By _____
Vice President

JOHNSON BROTHERS,
By _____

READ & CO.,
By _____

AMALGAMATED CORPORATION,
By _____
Vice President

Fig. 6.—Interim Receipt.

No. M INTERIM RECEIPT $1,000

for

AMALGAMATED CORPORATION

First and Refunding Mortgage Twenty-Year 6% Gold Bonds

Series A

Interest to be Payable March 1 and September 1

To be dated March 1, 1926. To become Due March 1, 1946.

THIS IS TO CERTIFY that the bearer, upon surrender of this Receipt at

the office of the undersigned, 200 Wall Street, in the Borough of Manhattan, City of New York, will be entitled to receive

—— ONE THOUSAND DOLLARS ($1,000) ——

principal amount of the First and Refunding Mortgage Twenty-Year 6% Gold Bonds, Series A, of AMALGAMATED CORPORATION carrying interest from March 1, 1926, proposed to be issued under an indenture of mortgage to bear date March 1, 1926, and to be made by said Amalgamated Corporation to National Trust Company and Henry F. Wall as Trustees when, as, and if said bonds shall have been prepared, executed, authenticated in definitive form and delivered to the undersigned for delivery pursuant hereto. This Receipt is issued under and pursuant to a letter of instructions to the undersigned, dated March 22, 1926, from Johnson Brothers and Read & Co. hereinafter collectively called the Bankers and Amalgamated Company and said Amalgamated Corporation.

One or more temporary printed bonds, exchangeable for such definitive bonds, will, if, as and when issued and received by the undersigned for that purpose (accompanied by a copy of an opinion of Counsel for the Bankers approving the creation, issue and sale to the Bankers of said Series A bonds) be held by it for the pro rata benefit of the bearers of the interim receipts of which this is one, pending preparation and delivery of the definitive bonds. If for any reason such temporary bond or such temporary bonds shall not have been delivered to the undersigned as aforesaid for the purposes aforesaid (accompanied by a copy of the opinion of Counsel for the Bankers as aforesaid) by May 17, 1926, or by such later date, if any, as the Bankers may fix and designate to the undersigned in a writing signed by each of them and delivered to the undersigned prior to May 17, 1926, the undersigned will forthwith give notice to that effect by publication once a day for two successive days in a daily newspaper published in the Borough of Manhattan, City of New York, and, upon such notice being so given, the undersigned will at any time thereafter, upon surrender of this Receipt, pay the sum of One Thousand Dollars ($1,000) to the bearer hereof, together with an amount equal to interest at the rate of six per cent (6%) per annum upon the principal amount of $1,000 from March 1, 1926, to the last day of such publication.

Said indenture will provide for an issue of $6,000,000 principal amount of Series A bonds to be presently outstanding and as provided in said indenture additional bonds of Series A or any other series may be issued from time to time on or after the execution and delivery of said indenture provided the total principal amount of bonds at any one time outstanding shall not exceed the principal amount of $25,000,000.

Every taker and holder of this Receipt, by accepting the same, agrees with the undersigned and with every subsequent taker and holder hereof, that this Receipt may be negotiated by delivery by any person having possession of the same, howsoever such possession may have been acquired, and that any holder who shall have taken this Receipt from any person for value and without notice of prior defenses or equities enforceable against such person, shall thereby acquire absolute title hereto, free of any defenses enforceable against or equities or claims of ownership of any prior holder. Every taker and holder of this Receipt hereby further agrees that the undersigned may treat the bearer of this Receipt as the absolute owner hereof, for all purposes, and that the undersigned shall not be affected by any notice to the contrary.

NATIONAL TRUST COMPANY,

Dated, New York, N. Y., April 6, 1926.

By————————————

Assistant Secretary

Sometimes it is desired to have attached to the interim receipt a coupon for interest due on the first interest date after the issuance of the receipt. There is no objection to this, provided appropriate references are included in the body of the interim receipt, and in the letter of instructions or agreement, and, further, that at the time of the issuance of the receipts cash is placed with the depositary to cover in full the interest represented by the coupon, or satisfactory assurance as to such payment is given.

Bankers' shares.—Under the "bankers' share" arrangement a bank or trust company, as depositary, issues its certificates representing an interest in deposited securities—usually stock. The stock may be selling on the market at a price which is so high that it is difficult to interest the average investor, and the company, for reasons of its own, does not care to issue a stock dividend to bring down the market price of its shares. In such a case the company, or, perhaps, bankers, interested in the market for the stock, will place with the depositary, under an appropriate trust agreement, a block of the stock, and pursuant to the terms of the trust agreement direct that institution to issue its "bankers' shares." The trust agreement may contemplate the deposit of a given number of shares in each of several companies; for example, in "units" composed of 1 share each of 10 different stocks. The following is the form of a typical "bankers' share" certificate covering one class of stock.

Fig. 7.—Bankers' Shares Certificate.

NYO No. THE CONSOLIDATED COMPANY BANKERS' SHARES SHARES———

(This Certificate is transferable either in New York, Boston, or Philadelphia.)

THIS IS TO CERTIFY THAT —— is the owner of —— of The Consolidated Company Bankers' Shares, so called, each such Bankers' Share representing a one-tenth (1/10) interest in a share of One Hundred Dollars ($100) par value of the common stock of The Consolidated Company hereinafter called the "Company," a corporation of the State of Delaware, and is subject to the provisions of the agreement hereinafter referred to, entitled upon surrender at the office of First Trust Company, Transfer Agent of the undersigned in the Borough of Manhattan, City of New York, of this Certificate, or this and other similar Certificates duly assigned for transfer, representing ten (10) or more Bankers' Shares to a certificate for one (1) share of common stock of the Company of the par value of One Hundred Dollars ($100) for each ten (10) Bankers' Shares represented by the Certificate or Certificates so surrendered, and to receive a new Certificate for any balance of Bankers' Shares over the highest multiple of ten (10) contained in the number of

Bankers' Shares so surrendered and until such surrender is entitled to receive, from time to time, the proportionate part, applicable to the Bankers' Shares represented by this Certificate, of any cash dividends in respect of the common stock of the Company deposited under said agreement, and of the net cash proceeds of any stock or other security dividends or distribution other than cash dividends, in respect of said stock, at the time, in the manner and upon the terms and conditions in said agreement provided. Said cash dividends in respect of said common stock, and such cash proceeds of any stock dividends when received by the undersigned hereinafter called the "Depositary," shall be paid by or on the order of the Depositary to First Trust Company for distribution by them to holders of Bankers' Shares, as above set forth, for which said distribution the Depositary shall not be responsible in any respect whatsoever. This Certificate is issued pursuant to, and is subject to, the terms and conditions of an agreement, dated the first day of March, 1924, by and between John Small & Company, National Trust Company as Depositary, and all present and future holders of Certificates issued and to be issued thereunder, to which agreement reference is hereby made, with the same force and effect as if herein fully set forth, for a full description of the rights of the holder hereof and of the rights, duties, and obligations of John Small & Company and of the Depositary hereunder and under said agreement, to all the provisions whereof the holder, by accepting this Certificate, assents. The holder of this Certificate is entitled to no voting rights whatsoever.[3] This Certificate is transferable only on the books of the Depositary, at the office of any of its transfer agents by the registered holder hereof as the owner hereof for all purposes whatsoever, except that delivery of stock certificates of the Company shall not be made without surrender hereof. This Certificate shall not be valid until and unless countersigned by one of the Transfer Agents and registered by one of the Registrars of the Depositary.

In Witness Whereof, National Trust Company, as Depositary, has caused this Certificate to be executed in its corporate name by one of its Assistant Secretaries, this ——, 19—.

National Trust Company, Depositary

Registered: Assistant Secretary.

Second Trust Company, Registrar

By

Assistant Secretary

Countersigned:

First Trust Company, Transfer Agent.

By

Assistant Cashier

It is important that such an agreement and the corresponding "bankers' shares," make specific provision for *(a)* the parties who shall have the right to deposit stock and require the issue of "bankers' shares"; *(b)* the total authorized issue, if any limit is desired other than that imposed by the amount of the company's stock outstanding; *(c)* the method of receipt by the depositary of dividends declared and paid on the

3 As an alternative there may be inserted a statement of the conditions on which the registered holder of a bankers' share may direct the Depositary to vote the stock covered by the bankers' shares.

stock of the company and the corresponding distribution of such funds to the holders of the "bankers' shares"; *(d)* the treatment of any dividends paid otherwise than in cash; *(e)* the control of the voting rights on the deposited stock; and *(f)* the conditions under which "bankers' shares" may be surrendered and the deposited stock withdrawn. It is good practice for the "bankers' shares" to be registered by another institution, and, to accomplish this, the trust agreement must contain appropriate provisions. If it is desired to make a market for the "bankers' shares" in two or more cities, the trust agreement will often provide for a transfer agent and registrar in each city under the general control of the depositary.

Investment trusts.—The investment trust, comparatively new to the American public, has been used in Great Britain for many years. It differs from the bankers' share arrangement chiefly in its provisions permitting investment in a wider range of securities. Instead of being confined to one or a few stocks comprising a "unit," the investment trust contemplates investment and reinvestments in, perhaps, hundreds of enterprises. In this way, it is claimed, the investor's risk is lessened by reason of the greater diversity of the investment.

In some cases the securities of an investment company take the form of collateral trust bonds and the deed of trust authorizes the trustee to allow substitutions of securities (within prescribed limits) provided the market value of the collateral is maintained at a certain percentage above the principal amount of the outstanding collateral trust bonds. There is no marked difference, in form, between an "investment trust" issue of this nature and collateral trust bonds which were discussed in Chapter XII, except the provisions as to investment control, which are often complicated and take a wide variety of form.

American shares.—Here again a financial institution is requested to issue its certificates, but for different reasons. This type of business has followed the War and is due to the growing tendency to sell foreign securities in this market. It is difficult to list foreign securities on the American exchanges, and, in any event, the investor here has not yet been educated

to the point where he readily purchases securities in unfamiliar form and expressed in foreign currencies. Consequently, bankers interested in making a market in this country for a foreign security frequently execute an appropriate trust agreement to an institution as trustee or depositary providing for the deposit of the stock of the foreign company and the issue of corresponding "American shares." The points which the trust officer will desire fully covered in such an agreement follow closely those mentioned under "bankers' shares," but, because the rate of exchange enters into the dividend problem, and the distance of the home office adds to the voting problem, the provisions relating to these two points are further complicated and should be worked out very carefully. The following is the form of a typical "American share" certificate:

Fig. 8.—"American Shares" Certificate.

No. 00000 100 "American Shares"

THE CONTINENTAL COMPANY, LTD.

Incorporated in the United Kingdom of Great Britain and Ireland

THIS IS TO CERTIFY that —— is the owner of —— ONE HUNDRED —— "American shares," so-called, each of such "American shares" representing an interest in two and one-half Ordinary shares, of the par value of five (5) shillings each, of THE CONTINENTAL COMPANY, LTD., a corporation of the United Kingdom of Great Britain and Ireland (hereinafter called the Company), deposited under the Agreement hereinafter mentioned, and is entitled on or after January 1, 1928, without the consent of the Depositors hereinafter mentioned, or before January 1, 1928, with the consent of said Depositors, upon surrender at the office of the undersigned in the Borough of Manhattan, City of New York, of this certificate duly endorsed for transfer, and upon payment of the charges, if any, provided for in said Agreement, to receive a certificate of the Company for five such Ordinary Shares, of the par value of five (5) shillings each, for each two "American shares" represented by this certificate, or, at the option of the Depositary, to receive an order calling for delivery at the office or agency of the Depositary in London, England, of a certificate of the Company for five of such Ordinary shares of the par value of five (5) shillings each, for each two "American shares" represented by this certificate; and until such surrender is entitled to receive from time to time, and as provided in the Agreement hereinafter mentioned, the proportionate part applicable to the "American shares" represented by this certificate of any dividends and rights received by the undersigned in respect of the Ordinary shares of the Company deposited under said Agreement.

This Certificate is issued pursuant to, and is subject to, all the terms and conditions of an Agreement dated the 31st day of December, 1923, by and between James Beaver & Co., a copartnership, of the City of New York, N. Y., therein and herein sometimes called "the Depositors," the undersigned and all registered holders of certificates from time to time outstanding thereunder.

This certificate is transferable on the books of the undersigned by the registered holder hereof, in person or by attorney duly authorized, on surrender hereof duly endorsed and according to rules established for the purpose by the undersigned and in consonance with the rules of the New York Stock Exchange.

This certificate is not valid unless registered by THE TENTH NATIONAL BANK of the City of New York, as Registrar.

IN WITNESS WHEREOF, THE NATIONAL TRUST COMPANY, as Depositary, has caused this certificate to be executed in its corporate name by its Secretary, or one of its Assistant Secretaries, this —— day of ——, 19—.

NATIONAL TRUST COMPANY,
Depositary.
By
Assistant Secretary.

Registered this —— day of ——, 19—.

THE TENTH NATIONAL BANK OF THE CITY OF NEW YORK,
Registrar.
By
Assistant Cashier.

French bearer certificates.— Beginning about 1908 the interest of the French investor in American securities appeared, in the judgment of some bankers, to justify an effort to supply the French investor with American securities in the form to which he was accustomed. As a result there were issued under agreements with American trust companies, as trustees, bearer certificates of small denomination, with dividend warrants attached, and in form acceptable for listing on the Paris Bourse. This transaction, it will be noted, is the reverse of that involved in the issue of "American shares." The World War, with its consequent financial stringency in Europe, has practically put an end to this type of business.

Foreign insurance trusts.[4]—Business of this type is received by the trust departments of institutions in the financial centers from foreign insurance companies which wish to enter into the business of insurance or reinsurance in this country. Most of the states will not permit foreign insurance companies to write insurance within their borders, unless they have qualified under the statutes and pursuant to regulations established by the respective state insurance departments. This qualification usually includes the deposit of securities or cash as a fund for the protection of policy holders or creditors. In

[4] There is no relation between this type of business and the so-called "insurance trust" established by an individual.

New York state part of the fund is required to be deposited with the insurance department and the remainder may be deposited with three individual trustees or one corporate trustee, located in the state of New York.

The following form of deed of trust is the "standard" form approved by the New York State Superintendent of Insurance.

STATES OF NEW YORK AND MASSACHUSETTS

Deed of Trust.

(To be used by insurance companies of other countries in the appointment of a United States corporate trustee, pursuant to the requirements of the statutes of such states.)

(CORPORATE TRUSTEE)

THIS INDENTURE, made this —— day of ——, in the year one thousand, nine hundred and ——, between ——, (Here insert the corporate name of the company in the English language, adding, if its corporate name is in a foreign language, the following: "incorporated under the name of ——") of the city of ——, in the —— of ——, a corporation organized under the laws of the —— of ——, hereinafter called "the company," party of the first part, and ——, of the city of ——, in the State of ——, a corporation organized under the laws of the State of ——, in the United States of America, hereinafter called "the trustee," party of the second part, WITNESSETH:

WHEREAS, under and pursuant to the provisions of the statutes of certain of the states of the United States, an insurance company organized under the laws of a foreign country and transacting business in such states is required to maintain in the United States a trust fund for the protection of all its policyholders and creditors in the United States, and to appoint a trustee or trustees as custodian or custodians of said trust fund; and

WHEREAS, the company is a foreign insurance company duly organized and existing under the laws of ——, and carrying on the business of —— insurance;

(Here insert the kinds of insurance business which the foreign corporation is authorized to transact under its charter or articles of association.)

THEREFORE, to the end that the statutes of such states may be fully complied with:

KNOW ALL MEN BY THESE PRESENTS, that the company has appointed ——, its lawful United States trustee, with this provision, that said trustee or its successor be authorized and have the power to receive such securities and property as the company from time to time may transfer or remit to or vest in said trustee or place in said trustee's hands or under said trustee's control, and to hold, invest, reinvest, manage and dispose of the same for the uses and purposes and in the manner and according to the provisions following, namely:

FIRST: The trustee shall cause the securities and property in which the said trust fund shall from time to time be invested to be, so far as practicable, entered, registered and kept under the following form or title: "The trustee by deed of trust for the time being in the United States of the —— Company."

SECOND: The trustee shall hold the above-mentioned securities and property and their proceeds as a fund in trust, out of which to pay or cause to be paid all lawful and valid claims or demands of policyholders and creditors of the company in the United States, or such pro rata share of such claims or demands as may be possible to pay therefrom.

THIRD: The trustee is authorized and empowered, with the previous written authority of the board of directors or the manager of the company duly empowered, or of the United States manager acting under the instructions of the company's board of directors or its duly empowered manager, to be signified in writing to the trustee, to sell or collect any security or property in the said trust fund, and to invest and reinvest the proceeds thereof in such securities or property as are or may be from time to time permitted by the laws of the state of the United States where the principal business office of the United States branch of the company is located, to the same extent and subject to the same restrictions, rules and regulations to which insurance companies incorporated in said state are or may be at any time subject.

FOURTH: The trustee shall from time to time, when required either by the company or the United States manager thereof, or by the insurance supervisor, whatever his official title may be, of any state of the United States where the company is admitted to transact business, make and certify a statement of the description and amount of the said trust fund, and of items of which it may consist, in such detail as may be required; and such certificate of description shall be a voucher for said funds to the company or the United States manager.

FIFTH: The trustee is also authorized and empowered, upon the written direction of said United States manager authorized as in paragraph third hereinbefore provided, from time to time to furnish said United States manager with property or securities out of said trust fund or any part thereof:

(1) For making deposits in any state or territory of the United States for the benefit and security of all the policyholders and creditors of the company in the United States under laws or regulations, now existing or hereafter to be established, requiring deposits for the benefit and security of all policyholders and creditors in the United States; and

(2) Unless — after five days' written notice of intention from the United States manager to the insurance supervisor, whatever his official title may be, of the state where the principal business office of the United States branch of the company is located — prohibited in writing by such supervisor, for the payment of moneys due to policyholders or creditors of the company in the United States; and

(3) If consented to in writing in each case by such insurance superivisor and not otherwise: (a) for obtaining loans on pledge of such property or securities and for effecting bulk reinsurances of all or any part of the obligations of the company on unexpired policies issued through its United States branch, provided such loans on pledge or such use for bulk reinsurances shall be for the benefit and protection of the company's policyholders or creditors in the United States; (b) for remittance or transfer to the home office of the company; or (c) for such other use and in such other manner for the benefit of the United States branch of the company as the said United States manager may require or direct.

Sixth: The trustee is also authorized and empowered, upon request of the United States manager of the company authorized to that end as in paragraph third hereinbefore provided, to pay or deliver any or all income, earnings,

dividends or interest accumulations of the securities or property of such trust fund to such United States manager and accept his receipt therefor.

Seventh: The trustee may resign by written resignation, such resignation to take effect not less than .... days from the date of the reception thereof by the company, and, in case of a vacancy caused by such resignation of a trustee or from any other cause, the company shall, subject to the approval of the insurance supervisor specified in paragraph fifth hereof, fill such vacancy by a new appointment, and the powers of the trustee shall survive and continue in the succeeding trustee, and every new trustee shall succeed to, take and have all the estate, rights and powers which belonged to or were held by and be charged with like obligations as its predecessors. But the trustee shall not be liable or responsible for any loss to the said trust fund unless the same be caused by its neglect or willful malfeasance.

Eighth: The company hereby reserves to itself the right at any time hereafter to add to, modify, alter or revoke the trusts, conditions and powers hereinbefore declared, imposed or conferred in such manner as it shall deem fit and as shall be according to law, provided the rights of its policyholders and creditors in the United States shall not thereby be affected or impaired, of which the insurance supervisor specified in paragraph fifth hereof shall be the judge, and of which fact his written certificate to the trustee shall be final and conclusive evidence.

Ninth: The trustee hereby accepts the trust above created and declared upon the terms above expressed, and signifies its acceptance thereof by joining in the execution of these presents.

In Witness Whereof, the company and the trustee have caused these presents to be subscribed and their corporate seals to be affixed, the company at ——, on the —— day of —— 19—, and the trustee, at ——, on the —— day ——, 19—.

Instructions

This Deed of Trust must be executed by the foreign company by:

(a) Affixing its name at the end of the deed of trust,; underneath such name, the two officers executing it should sign their names and add the titles of their offices, as "President," "Manager," "Director," "Secretary," etc.

(b) Affixing or impressing the seal of the corporation to the left of the signature of the company and its officers.

(c) Attaching the certificate of a notary public or other officer of the foreign government, state, city or district, to the effect that the deed of trust was executed by such officers for and on behalf of such company, on the day of the date thereof; that such officers were duly authorized by the board of directors of such company to execute it, and that the corporate seal affixed or impressed is the corporate seal of such company and was affixed to or impressed thereon pursuant to action of the board of directors of such company. Such certificate must be in the English language.

(d) Attaching to the certificate of the notary public or other officer a certificate by a United States consul, or vice-consul, identifying the notary public or other officer as duly qualified to certify the execution of legal documents. (The form usually followed by United States consuls or vice-consuls will be enough.)

This DEED OF TRUST must be executed by the trustee or trustees in accordance with the laws of the state where the deed of trust is to be first filed.

A trustee under a deed of trust of this nature should familiarize itself with its state insurance laws and regulations. The trust having been established for the benefit of United States policyholders and creditors, it is the duty of the trustee to see that the fund in its hands is not used for any purpose, except as permitted in the deed of trust. These trusts represent a very clean and profitable type of business, and often carry substantial balances in cash. The foreign insurance company is also required to appoint a United States manager, and the natural place for the United States manager to carry his company's account is with the institution which is United States trustee. Some interesting legal cases have resulted from these trusts, particularly with respect to Russian insurance companies.[5]

Escrows.—An escrow is the deposit with a stakeholder of cash, securities, title papers or other property, in regard to which two or more parties may have conflicting interests. It is one of the least profitable types of trust business, and, as indicated by its nature, one which involves considerable risk. The careful trust officer will investigate each escrow which is offered, and will act only upon the advice of counsel. In some instances the parties at interest will desire to make the escrow depositary a party to their agreement which is the basis of the escrow. This is not desirable. A deposit in escrow should be accepted only subject to a letter of instructions, signed by the parties at interest, making reference to no other agreement between the parties, and clearly defining the duties of the depositary under any conceivable contingency. It is also important that the letter of instructions set a time limit and completely instruct the depositary as to the disposition of the property covered by the escrow, in case the parties at interest shall fail, within the limit fixed, to carry out its terms. In order to avoid

[5] See Russian Reinsurance Company et al. v. Stoddard, 240 N. Y. 149.

possible embarrassment to the escrow depositary and to parties to the escrow, it frequently is advisable to incorporate in the original letter of instructions a clause providing, in substance, that the escrow depositary shall not be bound or affected by notice of the abrogation or modification of the original escrow terms, unless such notice is signed by all parties in interest.

Registrar of debentures, etc. (for identification). — A corporate trust department frequently is asked to act in the capacity of registrar for an issue of debentures or other obligations, with the duty of countersigning debentures to a given amount. Its services under such an arrangement are quite different from those of bond registrar which are discussed under corporate agency functions, but do comprehend a check against an overissue of securities and in that respect are comparable to the services of a stock registrar. The detail work involved under an appointment as registrar for identification (comprising the examination, recording, countersigning, and delivering of debentures) is closely akin to the work of a trustee in authenticating bonds. Hence, business of this kind usually is assigned to the corporate trust department, particularly as the records of that department are adapted to fit the needs of the case.

The appointment of a registrar of debentures is made by the issuing corporation's board of directors, or, in the case of foreign governments, by the minister of finance or appropriate governmental body. The registrar's duties usually consist merely of signing, for identification, debentures to the amount authorized by the appointment. In doing so it signs as Registrar of the issue usually in this form.

"Countersigned:
NATIONAL TRUST COMPANY
as Bond Registrar
by
Assistant Secretary"

If the debentures are to be given the benefit of a sinking fund or the privilege of conversion into other securities, the institution acting as registrar also may be appointed the agent of the debtor. Likewise, it may be appointed paying agent for the bonds or coupons. However, these functions are apart from the duties of the registrar.

The purpose of the arrangement is to provide an independent check on the amount of debentures issued, without the formality of a trust agreement. The signature of the registrar adds to the marketability of the debentures, because it carries to the investor an assurance that the authorized amount has not been exceeded.

Conversions.— Many bonds are issued containing a provision giving to the holder an option, on stated terms, to convert such bonds into another class of security of the debtor (usually common stock). In such case it is important to see that the provisions of the bond and the mortgage are specific as to: (1) the period during which such conversions may be made; (2) the rate at which the bonds are convertible into the other security; (3) the adjustment, if any, to be made between the accrued interest on the bonds to the date of conversion, and the accrued interest or dividends to the same date on the securities to be issued in exchange; and (4) the process by which securities are to be obtained with which to accomplish the conversion when bonds are tendered for that purpose.

Sometimes it is required that a certain number of days' notice must be given by bondholders who wish to convert their bonds into stock. This provision must be carefully observed by the trustee or conversion agent, as there might be a substantial difference in the value of the stock between the date when the bondholder gives notice and the date when his stock is issuable.

The Exchange Record (Form 5, page 40) is adaptable to use as a conversion record. In some cases, however, special records may be desirable.

Fiscal agent for municipalities, etc.— As fiscal agent for cities, counties, and states, a trust company or bank may perform duties which can hardly be included under "agency" functions. The office of the fiscal agent is the usual place of payment for the bonds and interest thereon. This may not, and usually does not, involve any trust relationship; but the fiscal agent frequently authenticates the bonds of a muncipality and, clearly, this action brings fiscal agencies within the scope of corporate trust department activities. Certain trust companies specialize in this class of business just as certain lawyers

specialize in passing upon the validity of municipal issues. However, this type of business is somewhat afield from the ordinary run of corporate trusts.

Paying agencies.—As we have just indicated, paying agencies usually do not involve a trust relationship, but there are many exceptions to this rule. The question becomes of particular importance in case of insolvency of the debtor. Regardless of whether funds received for the payment of bonds are a deposit in trust, most institutions find it more convenient to have all bond payments made by the corporate trust department just as all coupon payments are made by the coupon-paying department. Banks and trust companies in the financial centers receive a considerable number of bond-paying agencies from their correspondent banks in other cities, such correspondents being trustees under local issues of bonds whose terms provide that payment at maturity may be had in the financial centre if the holder so elects.

Chapter XIV

CORPORATE AGENCY SERVICES; REORGANIZATION DEPARTMENT

Scope of corporate agency services.—The growth of trust company business in the field which we discuss under the heading "Corporate Agency Services" has kept pace with, and, in some branches, has exceeded, the development of corporate trust business. The term "corporate agencies," in trust companies where the corporate trust department is separated from the corporate agency department or group of departments, usually refers to the activities assigned to the following departments or divisions:

Reorganization.
Stock Transfer.
Stock Registration.
Bond Registration.
Coupon Paying.

Division between trust and agency departments.—The general practice among large trust companies is to assign to the corporate trust department those functions under which the trust company assumes a relationship of trust and to deal with all or most of the business such as has been mentioned above in its corporate agency department. This is logical, and, where justified by the volume of business, appears to work out very satisfactorily. Such a clear-cut division is not always carried out because of practical reasons which may render it advantageous for one department to assume duties outside the usual scope of its activities.

Practice—large vs. small companies.— In the smaller trust companies, and even in many of the larger companies, where most of the trusts are personal, it is usual, and quite properly so, to group all corporate activities in one division of the trust department. But even so, the trust officer will do well to have the logical divisions in mind and so construct his

records that they can be subdivided with the least possible inconvenience and expense, if the future growth of his company should warrant that course.

In the case of the large companies, some diversity of practice will be encountered. For example, the largest trust company in the country includes reorganizations and bond registrations as part of the functions of its corporate trust department. In some companies bond payments are made at the corporate trust department, and in others at a joint bond and coupon-paying division of the corporate agency department, although, in many instances, a trust relationship exists, and, for that reason, theoretically, at least, bond payments fall within the purview of the trust department. But whether the division of functions follows exactly along the lines discussed in this book or whether some variations are adopted is not a matter of great importance provided the fundamental distinction between trust and agency services is always kept in mind.

Investigating offers of new business.—The matter of examining into the merits of proposed corporate trusts already has been mentioned (page 23). The same policy of caution should guide a trust officer in the consideration of business offered to the corporate agency department so as to prevent the acceptance of business which might reflect unfavorably on the fiduciary.

In the placing of corporate agency business (particularly transfer agencies and registrarships), corporations generally exercise a larger measure of control than they do in the case of corporate trusts, where the trustee is usually nominated by the bankers who underwrite the bond issue. Much corporate agency business, however, develops through the good offices of the underwriting houses, who frequently are in a position to suggest the name of the fiduciary.

Reorganization department.—The reorganization department of a modern trust company, whether attached to the corporate trust department or placed with the corporate agency group, ordinarily takes charge of the following types of business:

Corporate reorganization.—As here used the word "reorganization" is intended to denote the rearrangement of the

capital structure of a corporation, involuntary as regards the corporation, and usually effected through the legal enforcement of the rights of one or more classes of security-holders or creditors. In nearly all such cases the foreclosure of one or more liens is involved and the reorganization results in the formation of a new corporation, pursuant to a plan of reorganization submitted by committees representing various classes of security-holders and creditors.

Corporate readjustments.—In contrast to the use of the word "reorganization," "readjustment" is the term used to indicate the rearrangement of the capital structure of a corporation which is voluntary in nature, and consummated without the enforcement of the legal remedies of security-holders or creditors, often before the happening of an event upon which the enforcement of any remedies might be predicated. A readjustment may be effected with or without the intervention of committees representing the security-holders and creditors, but in nearly all cases with the aid of trust companies as depositaries.

Capital subscriptions.—It is now a well established practice of corporations, planning to issue new or additional securities and to extend to existing security-holders the right to subscribe to the new security, to make use of a trust company's service as subscription agent. In the case of stock issues (or, possibly, the issue of bonds which, by their terms, are convertible into stock of the debtor corporation) it is the general rule, by statute in some states and under common law in other states, that the right to subscribe to the new security shall, in the first instance, be extended to existing stockholders in proportion to their holdings.

Reorganizations.—It is in its capacity as depositary in connection with reorganizations that the reorganization division often comes in close contact with the corporate trust department. As previously stated, reorganizations, within the meaning of this discussion, are ordinarily consummated through the enforcement of the lien of one or more mortgages, or the legal remedies of one or more classes of creditors. Usually one or more trust companies stand as trustees for the bondholders (or creditors—such as noteholders or secured creditors) whose remedies are to be enforced.

Perhaps the trust company which is acting as depositary is also mortgage trustee. In its capacity as depositary it will have dealings with the bondholders who coöperate with the committee, and with itself as trustee on behalf of *all* of the bondholders. These activities of the depositary should be kept wholly separate and apart from those of the trustee. In a situation of this kind the advantages of making a clear distinction between trust and agency functions are apparent.

Ordinarily, the initial step of a reorganization takes place when the corporation has failed to pay, when due, one or more of its obligations for principal or interest on its outstanding indebtedness. Dividends on stock and interest on income bonds are not fixed charges, and failure to meet such payments does not constitute a default pursuant to which an involuntary reorganization may be brought about. At times the proceedings for reorganization are commenced before actual default has occurred, but when it is apparent that the company's financial situation is such that default is inevitable. In such a situation it is usual for the bankers who originally sold to the public the various classes of the company's securities to confer with the officials of the company as to the appointment of a receiver[1] and at or about the same time the bankers usually will take steps to organize protective committees for the holders of the various classes of securities.

Protective committees.— As its name implies, such a committee is organized to protect, through the process of reorganization, or otherwise, the interests of the security-holders it represents. Ordinarily, a protective committee, as distinguished from a reorganization or readjustment committee, later discussed, will represent the holders of only one class of security, and, consequently, there are often as many committees in the field as there are classes of securities of a given company. Any attempt by a protective committee to represent two or more classes of securities may well subject the committee to criticism by the security-holders and may also be frowned upon by the courts, because in the very nature of an involuntary reorganization there is bound to be

[1] James Byrne, "Some Legal Phases of Corporate Financing, Reorganization and Regulation," pages 77 et seq.

more or less conflict between the interests of the holders of the several classes of securities.

The natural assumption is that such committees would be appointed by the great body of holders of the securities of the respective classes. However, as bond and note issues are ordinarily in bearer form, it is not possible to reach many of the holders except after long and expensive advertising. Even in the case of stock and other registered security issues, human nature is such that it is next to impossible to secure prompt, effective, and united action, acute though the situation may be. Consequently, the bankers referred to above will usually consult a few of the larger known holders of the issue in which they are interested, and select the committee, the members being, or representing, large holders, the bankers who sold the issue, and sometimes (in the case of bond or note issues) the trustee. The advisability of the trustee accepting representation on the committee is open to some question, although the practice has many advantages, both to the committee and the trustee. The proceedings advocated by the committee will, with but few exceptions, need to be taken through the trustee. Consequently, a close working contact between these two parties is highly desirable. The other side of the picture, however, is that the committee represents only such holders as may, by depositing their securities under the deposit agreement—next discussed—authorize the committee to act for them, while the trustee is the legal representative of the interests of the whole body of holders of the issue in question, known or unknown. For this reason, a careful trustee, if it accepts representation on such a committee, will do so only on the distinct understanding that its representative shall be free to resign membership, if at any time an opposition committee is organized to represent the same issue, or any other situation arises which, in the judgment of the trustee, may cause embarrassment to it or to its representative on the committee. This situation is often satisfactorily met by having a member of the trustee's organization accept the secretaryship of the committee. The secretary's duties are merely ministerial and not representative, but his office provides a means for close contact between the trustee and the committee.

A similar question arises if counsel to the trustee is asked to act for the committee, and any acceptance by counsel should carry the reservations just suggested with respect to the trustee's representation on the committee.

A protective committee, at its organization meeting, will usually elect one of its members as chairman, and select counsel, one or more depositaries, and a secretary. Its next step is to adopt a form of deposit agreement and to arrange for the publication and mailing of a notice (see below) addressed to the holders of the securities it represents, advising them of the situation which calls for organized effort to protect their interests, the formation of the protective committee, and its personnel. The notice ordinarily invites the immediate deposit of the securities in question, with the committee's depositary. It will also state that copies of the deposit agreement may be had on application to the secretary or the depositary, and, in addition to the names (and usually the business connections) of the committee members, will give the names and addresses of the depositary, counsel and secretary.

Notice of Protective Committee.

PROTECTIVE COMMITTEE
THE CENTRAL RAILWAY COMPANY

FIRST MORTGAGE FIVE PER CENT 50-YEAR GOLD BONDS

New York City, January 20, 1925.

To the Holders of
The Central Railway Company
First Mortgage Five Per Cent 50-Year Gold Bonds:

Default having occurred in the payment of interest due June 1, 1924, and December 1, 1924, upon the First Mortgage Five Per Cent 50-Year Gold Bonds of The Central Railway Company, the undersigned Protective Committee has been formed in order that the holders of the said bonds may take concerted action for the protection of their interests.

Bondholders are invited to deposit their Bonds with National Trust Company at 200 Wall Street, New York City, as Depositary under a Deposit Agreement dated as of December 11, 1924. Copies of this Deposit Agreement may be obtained from the Depositary or from the Secretary of the Committee. Bonds must be accompanied by the coupons due June 1, 1924, and all subsequent coupons; Bonds registered as to ownership must be accompanied by properly executed transfers thereof in blank. Transferable certificates of deposit will be issued for the Bonds deposited. Application has been made to list such certificates of deposit on the New York Stock Exchange.

All the property and assets of The Central Railway Company have been acquired by the New York and San Francisco Railroad Company, which has

assumed the payment of the Central First Mortgage Bonds. On July 25, 1923, a Receiver was appointed for the Railroad Company in a suit brought by general creditors. The Receiver paid the interest due upon the Central First Mortgage Bonds on December 1, 1923, but subsequent installments of interest have not been paid. There have also been defaults in the payment of interest upon practically all the outstanding bonds or other obligations, issued or assumed by the New York and San Francisco Railroad Company.

Since the appointment of the Receiver, a number of suits have been brought to foreclose mortgages securing other outstanding issues of Bonds, and the receivership has been extended to such foreclosure suits. No such suit has been brought to foreclose the Central First Mortgage. In order that the interests of the holders of the Central First Mortgage Bonds may be adequately protected in the receivership proceedings, it is essential that a suit to foreclose the said Mortgage should be brought as promptly as possible. The provisions of the Mortgage make it doubtful whether such a suit can be instituted except through the action of the holders of at least 50 per cent in amount of the Bonds secured thereby. Approximately one third of the outstanding Bonds have now been deposited with the Committee's Depositary. In order to enable the Committee to cause foreclosure proceedings to be instituted as soon as possible, Bondholders are urged to deposit their Bonds immediately.

The prompt deposit of Bonds is essential also to enable this Committee effectively to participate in the formulation of a plan of reorganization. The other classes of securities will be represented by committees organized to assert their rights, and it is distinctly to the interest of the holders of the First Mortgage Bonds that they should be similarly represented. Preliminary investigations already made by this Committee show the necessity of prompt action with respect to a plan of reorganization. The Receiver is now operating the road at a loss. He estimates that for the calendar year 1925 the books will show an operating deficit of approximately $500,000. Receiver's certificates having a lien prior to all mortgages are now outstanding in the amount of $950,000, and the Receiver expects to apply for authority to issue additional certificates within the next few weeks. An indefinite continuation of the present state of affairs cannot fail injuriously to affect the interest of Bondholders.

The Deposit Agreement provides that the maximum expense which may be charged against any depositor will not exceed 2 per cent of the face amount of his Bonds.

For the above reasons, Bondholders are urged to deposit their Bonds without delay.

HENRY GREY, *Secretary,*
130 Pine Street, New York City.

ROOT, CASE & GARDINER, *Counsel,*

NATIONAL TRUST COMPANY, *Depositary,*
200 Wall Street, New York City.

GEORGE E. HILL, *Chairman,*
Hill & Son

WILLIAM C. BROWN,
Finance Committee,
Central Mutual Life Ins. Co.

DANIEL J. MORGAN,
Treasurer, New Haven Fire Insurance Co.

R. G. READ,
Vice President,
National Trust Company

Committee

Deposit agreement.[2]—Such an agreement evidences the contract between the committee and the depositing security-holders who receive, in lieu of their securities, transferable receipts known as certificates of deposit. Forms of certificates of deposit follow:

Fig. 9.—Certificate of Deposit (Bonds).

Number ——

CERTIFICATE OF DEPOSIT

$1000 for 4½% Convertible Gold Bond $1000

Due June 1, 1942

of

NEW YORK AND SAN FRANCISCO RAILWAY COMPANY

(With coupon maturing June 1, 1925, and all subsequent coupons attached)

Issued under an Indenture of said New York and San Francisco Railway Company, dated June 1, 1912, to Consolidated Trust Company, of New York as Trustee and deposited under and subject to a Plan and agreement dated June 1, 1925, for the Reorganization of New York and San Francisco Railway Company.

NATIONAL TRUST COMPANY

HEREBY CERTIFIES THAT it has received one bond of the issue aforesaid NUMBERED —— of the face value of principal of — ONE THOUSAND DOLLARS — with coupons attached as above stated. Said bond has been deposited subject to the terms and conditions of and is deliverable as stated in the above-mentioned agreement. The holder hereof assents to and is bound by the provisions of said agreement by receiving this certificate and is entitled to receive all the securities, benefits, and advantages to which the depositor of such bond is or may become entitled pursuant to the provisions of said agreement. The interest represented by this certificate is transferable, subject to the terms and conditions of said agreement, by the delivery of this certificate. This certificate may be registered as to ownership, but after registration no transfer except on the books of the Trust Company shall be valid unless the last transfer be to bearer, when the Certificate will be transferable by delivery as before.

New York, ——————————

Registered: —— NATIONAL TRUST COMPANY, Depositary

National Commercial Bank, Registrar

By By

Assistant Cashier Assistant Secretary

This certificate is not valid until signed by the Depositary and registered by the Registrar.

Fig. 10.—Certificate of Deposit (Stock).

No. —— CERTIFICATE OF DEPOSIT —— Shares

FOR STOCK OF

NEW YORK STEEL COMPANY

deposited under and in accordance with the terms of a certain Deposit Agreement dated June 19, 1925, between William H. Tree, Samuel Hill, and Morgan H. Green as a Committee, parties of the first part, and such stockholders of the New York Steel Company, as shall become parties thereto in the manner therein provided, parties of the second part. The purpose of said Deposit Agreement

[2] See pages 423 et seq. for form of a typical deposit agreement.

is to facilitate the proposed merger of New York Steel Company and Central Metals Corporation into one Company to be known as Central-New York Metals Company. The original Deposit Agreement has been lodged with National Trust Company, the depositary named therein.

NATIONAL TRUST COMPANY, as Depositary,

HEREBY CERTIFIES that it has received and holds for account of ——— a certificate or certificates representing ——— Shares of stock of New York Steel Company, subject to the terms and conditions of the above-mentioned Deposit Agreement. The holder hereof by receiving this certificate assents to and is bound by the provisions of the said Deposit Agreement and is entitled to receive all the securities, benefits, and advantages to which the depositor of said stock is or may become entitled pursuant to the provisions of said Deposit Agreement. This certificate and all rights and interests represented hereby are transferable subject to the terms and conditions of said Deposit Agreement on the books of the undersigned by the holder hereof in person or by attorney, upon surrender hereof duly endorsed.

New York ——

NATIONAL TRUST COMPANY, Depositary
By
Assistant Secretary

The deposit agreement is the committee's warrant of authority.[3] The parties to such an agreement are (1) the committee, and (2) the holders of certificates of deposit issued in lieu of the deposited securities. The fact that the persons who deposit the securities do not necessarily remain parties to such an agreement is of sufficient importance to warrant repetition. Such an agreement should be most carefully drawn to cover with legal completeness the authority of the committee; the procedure by which holders of certificates of deposit may become bound by the terms of any plan of reorganization adopted by the committee; the right, if any, of the holders of certificates of deposit to withdraw deposited securities; the method of notifying the holders of certificates of deposit of the adoption of a plan and of other matters which it is necessary to bring to their attention; the right of the committee to reimbursement for its expenses and payment of its fair compensation; and the duties and responsibilities of the depositary. Some of the terms of such an agreement involve legal questions which are of the utmost importance to the committee, but are hardly within the scope of this discussion which aims to consider points of the most interest to a depositary. The officer accepting on behalf of a trust company an appointment

[3] See Mr. Paul D. Cravath, "Reorganization of Corporations," in "Some Legal Phases of Corporate Financing, Reorganization and Regulation," pp. 162 et seq.

as depositary under such agreement will secure approval by his counsel of the provisions affecting the depositary, and will be interested primarily in seeing that the duties and responsibilities of the depositary are clearly and completely stated.

In passing, it is worthy of note that the investing public is insisting with increasing vigor that deposit agreements shall contain clear and workable provisions providing: (1) that the holders of certificates of deposit shall have the right of withdrawal, on payment of a pro rata share of the committee's expenses and compensation to date, if any plan of reorganization submitted by the committee shall not prove acceptable; and (2) that the total amount which the holder of a certificate of deposit may be required to pay toward the expenses and compensation of the committee shall be specifically limited, ordinarily to an amount not exceeding, say, 2 per cent of the face amount of the deposited securities.

Activities of depositary.— The various phases of a reorganization, prior to the adoption of a plan of reorganization, can be indicated by a brief explanation of the activities of the depositary.

Subdepositaries.—In cases where large blocks of securities to be covered by a deposit agreement are held in cities other than the city in which the depositary is located, it is customary to appoint trust companies in one or more of such cities as subdepositaries. This is a convenience to the security-holders and should result in increased deposits. The deposit agreement generally provides the method for the appointment of subdepositaries; either by the main depositary, or by the committee direct. The former method is advantageous both to the committee and to the depositary, for these reasons: first, the committee will look to the main depositary to transmit instructions to its agents, and, second, all securities held by the subdepositaries will be subject to the order of the main depositary. Certificates of deposit sometimes are issued by the subdepositaries as agents for the main depositary; but it is considered preferable to have only one type of certificate outstanding, to which end the main depositary issues its certificates upon appropriate requisition of the subdepositaries as they receive deposits.

It is essential that there be a complete system of reports

between the subdepositaries and the depositary, so that the latter shall be in a position promptly to certify to the committee any details as to the deposit of securities.

Listing of certificates of deposit.[4]—If the securities of the issue to be deposited are listed on a stock exchange, the protective committee will probably determine to apply promptly for listing the certificates of deposit. As the listing will result in the certificates of deposit having as ready a market as the undeposited securities, such action is advisable as an inducement to deposit, as security-holders are reluctant to exchange a readily marketable security for a certificate of deposit unless that, too, has equal trading conveniences.

Reluctance of security-holders.—While the listing of certificates of deposit covering listed securities is an important factor in inducing deposits, the lower market quotation for the certificates of deposit deters many security-holders from depositing. Due to the usual provision in deposit agreements that holders of certificates of deposit are obligated to pay a pro-rata share of the expenses and compensation of the protective committee, up to a stated percentage (ordinarily not more than 2 per cent) of the principal of the deposited securities, the market quotation for certificates of deposit will usually be under the quotation for undeposited securities, by an amount approximating the maximum liability for expenses provided by the deposit agreement. A hesitancy to exchange securities for certificates of deposit having a lower market valuation is characteristic of many security-holders. Frequently the philosophy of the person who withholds deposit for this reason is that there are undoubtedly plenty of other holders of the issue in question who are willing to accept the inconvenience of a lower market quotation, for the sake of the benefits eventually to accrue to all holders through a reorganization. When the reorganization has reached its final stage, so that this person may with reasonable certainty feel that his security will be subject to the market handicap for a short time only, he will deposit and, if necessary to participate in the benefits of the reorganization, pay his share of the expense.

---

[4] See pages 441 et seq. for listing requirements of New York Stock Exchange.

The holder of securities of a company facing the prospect of reorganization should recognize that the situation is one where there is little or nothing that he personally can do to protect his interests, and where, furthermore, the interests of all of the holders of the issue in question can be protected efficiently only through united effort. The committee's effectiveness in negotiations for reorganization is often in direct proportion to the percentage of the issue deposited, and in many cases the written instructions of the holders of a specified percentage of the entire issue are required as a prerequisite to setting the trustee in motion.

To put the matter differently, it would seem that the holder of securities of a company facing reorganization has two logical courses: one to sell his securities and take his loss, and the other (provided he is satisfied with the personnel and ability of the protective committee) promptly to deposit and so join with the other holders of the issue in an intelligent effort toward mutual protection. The foregoing is not intended to carry the inference that the efforts of reorganization committees are uniformly successful. There are cases where the security-holder has profited by withholding coöperation; but, from the point of view of the security-holder, such results are fortuitous, unless coöperation is withheld through a lack of confidence in the committee which later events prove to have been justified.

Registration of certificates of deposit.—As previously stated, the New York Stock Exchange requires an independent registrar for securities which it lists.[5] The same requirement is made by other exchanges. Consequently, if the certificates of deposit are listed, usually it will be necessary for the committee to appoint, as registrar of the certificates, a financial institution other than the depositary. The depositary then submits to the registrar, for registration, all certificates of deposit issued. The registrar of certificates of deposit has approximately the same duties as the registrar of stock.[6]

Mailing and publishing of notice.—The depositary maintains the official record of deposits, and usually the committee gives all required notices to depositors through the depos-

[5] The New York Stock Exchange requirements appear on pages 441 et seq.
[6] See pages 272 et seq.

itary. The ordinary procedure is for the secretary of the committee to present the notice, in form approved by the committee, to the depositary, with the committee's instructions that the notice be mailed to all holders of certificates of deposit, as their names and addresses appear on the records of the depositary at the close of business on a specified date. If the notice is one of the formal notices, required by the deposit agreement to be given to holders of certificates of deposit as a precedent to proposed action by the committee, the depositary will be requested to see that one of its competent employees makes an appropriate affidavit of the facts of the mailing, so that if, later, it becomes necessary for the committee to prove the mailing of the notice, suitable evidence may be available.

The method by which notice to holders of certificates of deposit shall be given by the committee should be prescribed by the deposit agreement, and, in the case of all formal notices, the provisions of the deposit agreement should be rigidly followed. While the obligation in this respect is that of the committee, the careful depositary will check to see that such provisions have been complied with, so that possible embarrassment both to the committee and itself may be avoided. Many deposit agreements require publication as well as mailing of notice, and in such cases the secretary of the committee will usually attend to the publication, although at times the depositary is requested to see to the publication as well as the mailing of notices. If the depositary handles the publication, it should see to it that the proposed dates, places, and media of publication fully cover the requirements of the deposit agreement, securing, in due course, from the papers carrying the notice, affidavits of publication in duplicate—one set of the affidavits to be retained in its files as depositary, and the other to be transmitted to the committee.

Relationship between depositary and committee's secretary. —Ordinarily, the contact between the depositary and the committee is through the committee's secretary. If experienced in the work, the secretary can do much to make the depositary's work run smoothly, and, by the same token, if the secretary is not conversant with reorganization work,

the experienced depositary can be of much assistance to him and, through suggestion and advice, do much toward facilitating the detail work between the committee and depositary.

Interest and other payments.—At times a committee may collect sums on account of unpaid interest on the principal obligation, or even a partial payment on account of principal. It is usual for the committee to pay such sums to the depositary with instructions to it to make pro rata distribution to the holders of certificates of deposit. Except in unusual cases, such payments are made only on presentation of the outstanding certificates of deposit for appropriate endorsement, such endorsement giving notice to all subsequent holders of the certificate of deposit that distribution has been made. Exceptions would be only in the case of fully registered certificates of deposit which by their terms provide for such payments without endorsement.

Another somewhat common practice is for the protective committee, acting under authority contained in the deposit agreement, to pledge the deposited securities and borrow funds to pay interest, as it matures on such securities. In that event the committee will notify holders of certificates of deposit of the arrangements made, and of the holder's option of receiving an advance on account of matured interest, provided the certificates of deposit are presented for appropriate endorsement by the depositary. The holder of a certificate of deposit so endorsed, is required, in case he withdraws his deposited securities, in accordance with the provisions of the deposit agreement, to pay to the committee, in addition to his pro-rata share of the committee's expenses and compensation, the amount of such advance with interest to date of repayment.[7] Similarly, upon completion of the reorganization, proper adjustment is made in the distribution of the new securities between certificates of deposit bearing endorsement of such advances and unendorsed certificates. In other words, the scheme may be more or less a matter of robbing Peter to pay Paul, for, while intended to supply those who are in need of the income with the equivalent of the income on the deposited securities during the process of reorganization, the recipient of the advance may find that he

[7] See Article XI of Deposit Agreement, p. 434.

has been living on principal instead of income, if the plans of the committee miscarry.

Acceptance of certificates of deposit of other committees.—In reorganizations, particularly of the larger companies, it sometimes happens that two or more committees are in the field representing the same issue of securities, usually professing somewhat different aims in reorganization. There then develops a contest between these committees to represent the largest percentage of the issue in question. To cover this situation, and to provide for a security-holder who has deposited with one committee but who has subsequently become convinced that his interests will be more ably protected by a second committee, most deposit agreements now permit the acceptance of certificates of deposit of other committees, representing securities of the same issue, in lieu of the actual securities. In discussing the deposit agreement (page 196) mention was made of the right of withdrawal. Deposit agreements, as a rule, do not permit withdrawal of deposited securities, except during a specified period following the presentation of a reorganization plan, and then only upon the conditions and the payment provided by the agreement. The acceptance, therefore, of the deposit of a certificate issued by another committee requires: (1) a proper notation on the certificate of deposit issued in exchange, to the effect, *(a)* that the certificate is issued against the certificate of deposit of another committee and not the actual securities, and *(b)* that the committee is authorized, at the proper time, to withdraw the actual securities from the first committee and to pay whatever expense is involved for the account of the holder of *its* certificate of deposit; and (2) a careful watch of the progress of the reorganization, so that the opportunity to withdraw the securities from the first committee's deposit agreement shall not be overlooked. While the responsibility for all such matters is on the committee, the efficient trust company as depositary will carefully follow a situation of this kind to prevent possible difficulties both to the committee and itself.

Certification as to deposits.—In the course of most reorganizations, a committee representing bonds or notes will wish to give certain instructions to the trustee of the issue.

As explained in Chapter X (page 146) the default provisions of a mortgage ordinarily stipulate that, while the trustee in certain contingencies *may* take action in its discretion, it *shall* take the required action on receipt of written instructions from the holders of a specified percentage of the outstanding bonds, and, if it so requires, upon receipt of indemnity satisfactory to it. Consequently, when the committee desires to instruct the trustee, for example, to commence foreclosure proceedings, it will require of the depositary its formal certificate to evidence the amount of bonds on deposit with the committee. This certificate may be used by the committee not only as the basis for its instructions to the trustee, but also as evidence in connection with indemnity which the trustee may require. If the committee represents a substantial majority of the bond issue, and if the position of the issue in the pending reorganization is fairly strong, the trustee usually will accept the pledge of the deposited bonds as security for the indemnity which it requires. This indemnity is to protect the trustee for its liability, expenses, and compensation, in connection with the action requested by the committee. The bonds can be so pledged, however, only if the deposit agreement has specifically given to the committee the right so to use the bonds. If such indemnity is given, and accepted by the trustee, the trustee will promptly notify the depositary of its lien on the deposited bonds, and it then becomes the obligation of the depositary to see that this lien is satisfied before it releases the deposited bonds for any purpose.

Summary of depositary's functions prior to reorganization. —At this point it might be well briefly to summarize the functions just discussed which, generally speaking, represent the depositary's duties prior to the presentation of a reorganization plan:

1. Receive an executed counterpart of the deposit agreement (with a supply of copies for distribution) as evidence of the agreement between the committee and the holders of the certificates of deposit to be issued and, also, as evidence of the appointment of the depositary.

2. Receive from the committee copies of its notice of organization, with details of publication thereof and, for dis-

tribution, a supply of copies of any circular letter issued by the committee.

3. Receive from its counsel approval on its behalf of the form of deposit agreement, notice, and circular. The form of such papers is usually examined by the depositary in advance of execution or issue. While there is, perhaps, no basis for the depositary insisting upon passing on the form of the committee's notice and circular, there should be the closest possible coöperation between the committee and its agent, the depositary, and these forms are usually submitted to the depositary for criticism or suggestions.

4. Accept deposit of securities of the issue covered by the deposit agreement and issue its certificates of deposit (see Figs. 9 and 10, pages 194 and 195).

5. Enter the full name and address of the depositor with the details of deposited securities, such as amount and certificate or bond numbers on the depositary's records.[8]

6. If bearer certificates, with the right of registration, or fully registered certificates, are adopted, the depositary should be prepared to record registrations and transfers on forms as explained in Chapter XVIII (page 272). In most cases of the deposit of bonds the bearer form of certificate of deposit (sometimes with the privilege of registration) is used.

7. If the certificates of deposit are to be listed on a stock exchange, the depositary will furnish to the committee for submission, with its listing application, a certificate of the amount, and, if required, the details of deposits to the date of application, and will agree to notify the listing committee, periodically, of additional deposits. The New York Stock Exchange has certain requirements as to the form of certificates of deposit which it will list.[9] Most trust companies in New York handling this type of business in any volume have a standard form of engraved certificate of deposit satisfactory to the Stock Exchange, upon which it is necessary to print only the details of the issue.

8. In the event that a separate registrar is required to comply with the regulations of the Stock Exchange, the depositary will see that a registrar is formally appointed by the

[8] See Chapter XVI, pages 220 et seq.

[9] See page 446.

committee, that the certificate of deposit contains proper provision for the signature of the registrar, that mutually satisfactory arrangements are made between the depositary and the registrar for the certification to the registrar of the amount of deposits on the basis of which the registrar signs the certificates of deposit, and that no certificates of deposit are delivered until properly signed by the registrar.

9. From time to time, on the request of the committee, the depositary will furnish certified lists of the depositors, or, as is more usually the case, will, on instructions of the committee, attend to the mailing of circular letters to depositors and submit to the committee, if required, affidavits of mailing. In cases where a list of the holders of the undeposited securities is available, the committee will often deliver a copy of such list to the depositary and request it also to attend to the mailing of its communications to the holders of undeposited securities. Such lists, other than stockholders' lists taken from the stock ledgers, are usually far from accurate, and the careful depositary will see that every effort is made to build up an accurate list from correspondence with security-holders and from other sources.

10. A depositary will receive numerous letters from holders of undeposited securities inquiring as to the situation of the company, the standing and aims of the committee, and the progress of the proposed reorganization, as well as letters from depositors on the latter point. In replying to this correspondence, it is well for the depositary to keep in close touch with its counsel and with the committee, usually through the latter's secretary or counsel. Care and tact in handling these inquiries will often be of material assistance not only to the committee but to the security-holders themselves.

11. If the committee collects and decides to disburse to the holders of its certificates of deposit funds on account of principal, interest or dividends, the depositary will receive such funds from the committee and disburse them on the committee's instructions, making appropriate endorsement on the certificates of deposit upon which such payments are made.

Time for deposits.—Generally the committee's first request for deposits does not specify a time limit; but, when the committee's plans for reorganization begin to take definite

shape and the committee feels that it is about ready to present a formal plan of reorganization, it usually will notify non-depositors, by publication or otherwise, that, after a certain date, deposits will no longer be received, or will be received only upon terms to be imposed by the committee. The fixing of such a date usually results in additional deposits, as, unfortunately, many security-holders dislike to deposit until the last moment. The committee of course has the right, which it often exercises, of extending the time limit. Usually, even after the expiration of the final date, the committee will continue to accept deposits until consummation of the reorganization, upon payment of a specified penalty.

Chapter XV

REORGANIZATIONS *(Continued)*

Presentation of the plan.—When the committee, either by itself or in coöperation with other committees or interests, has worked out a plan of reorganization, it will deposit a copy of the plan with the depositary, and publish the notice, required by the deposit agreement.[1] The committee in practically every case will be required to mail a copy to each holder of a registered certificate of deposit. As a matter of good practice, the committee will often mail a copy of the plan to each depositor appearing on the records of the depositary. Ordinarily, the deposit agreement will provide that, for a specified period, say 30 days, from the date of first publication or mailing of notice, the holders of certificates of deposit who do not approve of the proposed plan may, upon surrender of their certificates of deposit and payment of their pro-rata share of the compensation and expenses of the committee, not exceeding the limit fixed by the deposit agreement, withdraw their securities and so become freed of any obligation to the committee. While a deposit agreement may not specifically cover the point, a committee, as a rule, will not attempt to consummate a plan, if a substantial part of the deposited securities are withdrawn upon submission of the plan.

Dissents.—Many of the newer deposit agreements do not give the right of actual withdrawal until a plan of reorganization is declared to be operative, but do provide that, during the prescribed period following announcement of the plan, holders of certificates of deposit may, if they so desire, file with the depositary their written dissent to the proposed plan,[2] and, if such dissents, representing, say, a majority of the deposited securities, are filed, the committee shall declare the proposed plan abandoned, and, at its option, work out another

[1] See provisions of typical deposit agreement, p. 423.

[2] See Art. VII of the typical deposit agreement, p. 429.

plan. If the dissents filed are not in an amount sufficient to cause the committee to abandon the plan, the committee will, by notice, as required by the deposit agreement, declare the plan operative. In that event, the holders of certificates of deposit, who filed written dissents, will have a further period, specified in the deposit agreement, in which to withdraw their securities, upon payment of their share of the committee's compensation and expenses, as fixed by the committee within the limits prescribed in the deposit agreement.

Joint reorganization committee.— At this point it might well be said that, while in the case of smaller companies, a reorganization plan is often worked out by one committee and approved or assented to by the other committees in the field, a much closer coöperation between committees is required in reorganizing larger companies. Frequently the various committees involved in the reorganization of a large company agree to the formation of a reorganization committee, composed of one representative of each deposit or protective committee. Such a reorganization committee will elect its own chairman, often the representative of the committee whose securities seem to hold the commanding position in respect of the proposed reorganization. It will also select counsel and a secretary and proceed to work out a plan. The representative of each deposit or protective committee will keep his own committee advised of the progress of the reorganization committee and will present to the reorganization committee the point of view of his committee and the arguments on behalf of the securities represented by his committee. This is by far the most effective method of working out a plan for the reorganization of a complicated corporate situation. The selection by each deposit or protective committee of its representative on the reorganization committee is a matter of prime importance, as that representative's ability as a negotiator probably will have a direct bearing on the treatment of their securities in the reorganization.

Adoption of plan.—Upon expiration of the period prescribed by its deposit agreement, after submission of its plan, provided the dissents or withdrawals do not indicate a rejection of the plan by the security-holders, the committee

will declare the plan operative, or, if submitted through a reorganization committee, will declare it approved and adopted.

Assessments.—In many reorganizations it is necessary to raise cash either to improve the physical properties of the company or to increase its working capital. In the case of a company in process of reorganization, it is usually difficult, if not economically impossible, to secure new cash through public sale of new securities. In practically all such situations there is one class of securities holding a position so strong that, without question, the proceeds, even of forced liquidation, would pay their claims in full. There is usually, also, a class of securities whose equity in the situation is dependent upon the "going concern" value of the business, and as to which it is apparent that a forced liquidation would practically destroy their value. Any plan of reorganization of such a company is, therefore, intended primarily to protect the equities of these junior securities. If new capital is required, and if, as is likely, it is not possible to sell new securities on an economical basis without seriously weakening the position of the senior securities, it is proper and usual for the reorganization plan to provide that the holders of the junior securities, as a condition precedent to participating in the proposed reorganization, must pay a cash assessment, which, when it has been equitably distributed among the various issues of junior securities, will produce the required new capital. Ordinarily the subscribing security-holders will be given for the new cash a security which in the reorganized company would seem to have an assured position, and, upon payment of the assessment, also will be given in exchange for their old security, a junior security, perhaps common stock, to an amount which fairly represents the "going concern" equity of their old security.

The basis of any such assessment is fully set forth in the plan of reorganization and forms a part thereof. It is, of course, not possible to have assurance that all of the security-holders will pay the proposed assessment. Consequently, the reorganization committee will arrange with bankers to underwrite the assessment for a commission. At times, where the equity of the assessed stockholders is very weak, it is neces-

sary, in order to secure public underwriting, for the plan of reorganization to place upon the holders of the securities next in rank the burden of an intermediate underwriting.

In many reorganizations there is a "twilight zone" between the securities of assured position on forced liquidation, and the securities entirely dependent upon the "going concern" value of the business. The intermediate security holders usually will be offered, without assessment, junior securities in the reorganized company.

Consummation of reorganization.—A plan of reorganization is almost invariably consummated through the foreclosure of the lien of one or more of the mortgages on the property of the company, or through the enforcement of creditors' claims. At the foreclosure or bankruptcy sale, the reorganization committee will buy in the assets of the reorganized company, and offer in payment (1) the deposited securities, to the extent of their pro-rata share in the net proceeds of the sale, and (2) cash for the balance.[3] If the position of the securities which it represents is strong enough, the committee will borrow the funds required to make the requisite cash payment. In many cases this is not possible and, consequently, the reorganization committee will need to arrange with the bankers underwriting the plan to advance the necessary cash.

While, as stated, the deposited securities usually are used by the committee in making payment on account of its purchase of the properties of the reorganized company, the securities, as a rule, are not physically presented to the officer of the court making the sale. The committee will obtain from the depositary a statement of the securities on deposit, which it will present in lieu of the actual securities. Promptly upon the acceptance of its bid it will direct the depositary to hold the securities for the account of the court officer conducting the sale. Probably, as previously indicated, the depositary will already have been directed by the committee to hold the securities, under its indemnity agreement with the trustee, and perhaps also as security for loans contracted by the committee for current expenses or advances on account of interest. The depositary, of course, must not disregard these pledges, but

[3] Paul D. Cravath, "The Reorganization of Corporations," in "Some Legal Phases of Corporate Financing, Reorganization, and Regulation," p. 181 et seq.

should request the committee, just prior to the sale, to arrange proper releases. The trustee, at this point, ordinarily will be willing to release its lien and look to the proceeds of the sale of the mortgaged property for its expenses and compensation, and the committee, if it has outstanding loans, will secure from the underwriters sufficient cash to liquidate such obligations. While the committee is necessarily interested in the release of these prior liens, the depositary, until the actual release, is responsible to the holders of the liens, and should for its own protection see that full releases are secured.

Unless, as seldom happens, the proceeds are sufficient to pay the securities in full the special master, or other officer of the court conducting the sale, will direct the depositary to place on the securities, for his account, an appropriate endorsement evidencing the payment on account out of the proceeds of the sale, and then to return the securities to the committee.

The cash proceeds of the sale, applicable to the undeposited securities, will be held by the court, or paid to the trustee for account of the court, to be disbursed to the holders of the undeposited securities, upon presentation thereof for proper endorsement.

In the meantime, the committee will have caused a new corporation to be organized to carry on the reorganized business, and will sell to it, in exchange for its securities (to be delivered in accordance with the adopted plan of reorganization) all of the properties of the old company acquired at the sale.

Distribution of new securities.—The reorganization committee will now transmit the securities of the new company to its depositary with instructions to it to deliver such securities in accordance with the plan of reorganization, as adopted, to the depositing security-holders, upon surrender of the outstanding certificates of deposit, and upon payment of the assessments, if any, imposed by the plan. The depositary will cancel its certificates of deposit as surrendered in exchange for the new securities, and, on instructions of the reorganization committee, will credit the account of the new company with assessments as received.

If assessments are imposed by the plan, a time limit will be prescribed, within which the security-holders must make payment if they desire to exercise their option. Upon expiration of this period the depositary will certify to the committee and the underwriters[4] the amount and details of the assessments paid. The committee will then call upon the underwriters to make payment of the balance, and direct the depositary, upon receipt of the proper payment, to deliver to the underwriters proportionate amounts of the securities of the new company.[5]

General.—In the discussion of the consummation of a reorganization we have, for the sake of simplicity and brevity, referred to "depositary" in the singular. As mentioned in the preceding chapter (page 190) there is usually a separate deposit committee for each class of security of a company in process of reorganization. Each deposit committee names its own depositary. As a depositary is purely an agent, there is no reason why one trust company should not act as depositary for two or more classes of security; but in practice this is seldom done. Consequently, it must be understood that there are normally a number of depositaries, each acting for a committee representing one class of securities, and that, when a plan of reorganization has been promulgated, each committee will direct its own depositary in such of the steps discussed above as affect the securities which it represents.

Also, for the sake of brevity, we have referred to "plan of reorganization" and not the more usual modern term of "plan and agreement of reorganization." The average security-holder finds it difficult readily to comprehend complex

---

[4] See page 208, as to the underwriting of a reorganization plan.

[5] Upon consummation of a plan of reorganization, a trust company, as trustee, having in mind its responsibility to *all* of the bondholders, may request the reorganization committee to permit holders of undeposited bonds to participate in the plan for a short time, say sixty to ninety days, subject to such reasonable penalties for their delay in depositing as the committee may impose. A trustee taking this position is justified primarily upon the ground that the reorganization committee, when buying in the mortgaged property at foreclosure or bankruptcy sale, ordinarily will have little or no opposition and, consequently, will buy in the property at or near the upset price fixed by the court, which frequently is materially lower than the actual value of the property. The holders of undeposited bonds, if not permitted to share in the reorganization, could look only to their pro rata share of the net proceeds of sale.

legal documents. For this reason, the practice has grown of separating the plan and the agreement. The plan is a statement setting forth as briefly and as simply as possible, the terms of the proposed reorganization and referring specifically to the agreement, which is the contract between the parties at interest, and, consequently, forms the actual basis of the reorganization.

Termination of depositaries' duties.—Once a reorganization is completed, the various committees which brought it about will naturally pass out of existence, and in later years it may be difficult or impossible for the depositary to get instructions from a member who might speak, even informally, on behalf of the committee. It is, therefore, a very wise precaution for the depositary to request of a committee, at or prior to its last meeting, instructions covering, so far as possible, the final disposition of all securities or documents relating to the reorganization, which are in the possession of the depositary or may be received by it later.

A committee in passing such a resolution will usually cover the following points:

1. Direct its secretary to deliver to the depositary, for custody, the minutes and important records of the committee.
2. Arrange for the final disposition of the deposited securities, perhaps through delivery to the new company, or cremation by the depositary after the elapse of a specified number of years.
3. Authorize the cremation by the depositary of its canceled certificates of deposit after a specified period of years.

This is a matter of considerable importance to a trust company acting as depositary. If this procedure, or its equivalent, is not followed, the trust company in the course of years will find itself burdened with the custody of a mass of securities of little or no value, but with no one authorized to direct it in disposing of them.

Chapter XVI

CORPORATE READJUSTMENTS, CAPITAL SUBSCRIPTIONS, AND REORGANIZATION DEPARTMENT RECORDS

Readjustments.—A readjustment is the "voluntary" rearrangement of the capital structure of a corporation, although many corporate readjustments, while voluntary in form, are carried out purely to avoid a reorganization.

There are two important differences between a readjustment and a reorganization: (1) a readjustment does not necessitate the enforcement of the legal remedies of security-holders or creditors, consequently, there is no foreclosure sale and the business after readjustment is carried on by the original corporation; (2) all classes of security-holders in a readjustment ordinarily are represented by one committee. The obvious reason for the first distinction is that the readjustment plan is presented before the happening of a default which could be the basis of remedial action by the security-holders. As to the second, it has been explained, in the discussion of reorganizations, that it is not considered proper for one committee to represent more than one class of security-holders. In negotiating a basis of reorganization, there are, in the very nature of the transaction, conflicts of interest between the holders of the different classes of securities. In the usual form of readjustment, as contrasted with a reorganization, the plan is worked out by the corporation, its bankers, or the readjustment committee itself, *before* the matter is submitted to the security-holders. Consequently, the deposit of securities under such a readjustment plan constitutes the committee the agent of the security-holders, not to negotiate the terms of a plan, but merely physically to carry out a stated plan, the terms of which are approved by the security-holders by the act of depositing their securities.

It is not intended by the above statements to convey the impression that substantially all readjustments are undertaken

merely to escape an involuntary reorganization. It is obvious that many times such a situation may be the immediate reason, and, when it is possible to secure the necessary coöperation of security-holders and creditors, a voluntary readjustment rather than a reorganization will benefit creditors, stockholders, and perhaps other security-holders through the saving in expense, and the avoidance of the long delays inherent in foreclosure. On the other hand, many corporations, in the course of their progress, find that their capital structure has taken such shape as to be a handicap, and, although in no immediate financial difficulty, such corporations will sometimes "take time by the forelock" and offer a plan for readjustment before the handicap of their capital situation has become serious enough to threaten reorganization.

From the standpoint of trust company practice, the corporate readjustment, though simpler, presents little fundamental difference from a reorganization. As previously stated, the plan of readjustment is presented at the outset, either by the corporation, by its bankers, or by a committee organized for the purpose. The security-holders, and, if necessary, the creditors, are invited to deposit their securities and claims, against which the depositary will issue its certificates of deposit. When the readjustment committee, the corporation or its bankers, as the case may be, decide that a sufficient percentage of each class of securities or claims has been deposited, the plan will be declared operative and the new securities will be issued by the corporation as provided in the plan. The depositary will then proceed to deliver the new securities to the participants in the readjustment, upon surrender and cancellation of its outstanding certificates of deposit. It should be noted that, as there have been no foreclosure proceedings and as the original corporation carries on the business after readjustment, there is no way of forcing into the plan all security-holders and creditors. As a consequence, minority holders frequently insist upon maintaining their original position. Such situations often continue for years after a readjustment; but gradually work out, through the purchase of such holdings, their maturity or redemption, the enhancement of value of the new securities if the readjustment is successful, or through involuntary reorganization, if the company, despite the readjustment, finally

"goes on the financial rocks." Another point to be remembered is that a corporate readjustment does not necessarily affect all classes of outstanding securities. On the contrary, in most cases, only junior bondholders, stockholders, and possibly the general creditors are involved.

Capital subscriptions.—A corporation extending to its stockholders the right to subscribe to new or additional securities usually issues "rights" or subscription warrants evidencing the right of each stockholder to subscribe to the new security on the specified terms. These warrants are then transmitted to the stockholders by the corporation or its transfer agent. To insure complete subscription it is usual for the corporation to arrange with bankers to underwrite, for a commission, such part of the new issue as may not be taken by the stockholders. The "rights" or subscription warrants are usually registered in the names of the company's stockholders of record on a given date and specifically state: *(a)* the class of security to which subscription may be made; *(b)* the amount of such security to which the stockholder is authorized to subscribe; *(c)* the place, rate, and method of payment of the subscription, if exercised; and *(d)* a date on or before which the right to subscribe must be exercised or the subscription warrant will become void.

Ordinarily subscription warrants will contain, on the reverse side, two forms: (1) a subscription form to be executed by the owner when exercising the right of subscription; and (2) a form of assignment so that the stockholder who does not desire further to increase his investment in the company may assign and sell his "rights" in the market. (The market price of rights varies with each issue but often is substantial.) A typical subscription warrant appears on page 216 (Fig. 11).

The functions of a trust company as subscription agent, upon receipt from the corporation of appropriate evidence of the terms of the subscription and of its appointment as subscription agent, are *(a)* to accept subscriptions as presented in accordance with the terms thereof (often the stockholder is given the option of paying fully or in installments); *(b)* to issue to subscribers part or full paid subscription re-

[1] Where records of stockholders are kept on stencils the stencils are used to print the stockholders' names and addresses on the face of the warrants.

ceipts—or "purchase certificates" (Fig. 12, page 218); *(c)* to credit or remit the proceeds of subscriptions to the corporation; *(d)* at the close of the period during which subscriptions must be made to certify to the corporation the details of subscriptions received; *(e)* to receive the subscription of the underwriters to the balance of the issue; and *(f)* upon receipt of the new securities issued by the corporation, to make delivery thereof upon surrender of the outstanding full-paid purchase certificates or subscription receipts. It sometimes has the further duty of transferring warrants (and subscription receipts, if transferable) either to a new owner or into other denominations in the name of the original stockholder. These transfer services might be assigned to the transfer department, but frequently it is more convenient for the reorganization department to take charge of them.[2]

Fig. 11.—Subscription Warrant.

VOID AFTER OCTOBER 22, 1925

Subscription Warrant for Shares of Stock.

No. ——

Right to subscribe for —— shares being at the rate of one share for each ten shares outstanding September 21, 1925.

THE DETROIT COMPANY

110 Broadway, New York, N. Y., October 1, 1925

This is to certify that } or assigns, is entitled to subscribe on

October 22, 1925, at the rate of $100 per share, for —— shares of the stock of THE DETROIT COMPANY, to be issued in accordance with and on the terms and conditions set forth in the circular, dated September 9, 1925, issued by the Board of Directors to the stockholders of the Company and on the terms and conditions hereinafter set forth:

Payment of such subscription must be made, either in full on October 22, 1925, or in the following specified installments, to wit:

On October 22, 1925, 25 per cent;
On December 22, 1925, 25 per cent;
On March 22, 1926, 25 per cent;
On June 22, 1926, 25 per cent.

All payments must be made either at the office of National Trust Company, 200 Wall Street, New York, N. Y., or at the office of Border Trust

[2] The question of Federal transfer tax on transfers of warrants should be kept in mind, also state taxes, if applicable.

Company, Detroit, Michigan, and must be in funds current in the city where such payments are made and free from collection charges.

To those paying in full on October 22, 1925, there will be issued on or about October 27, 1925, the stock certificates to which they are entitled.

To those electing to pay in installments, there will be issued transferable purchase certificates, acknowledging receipt of first payment, and these certificates must be returned at the times fixed for the second, third, and fourth payments, accompanied in each case by the prescribed payment. The certificates of stock covered by the purchase certificates will be delivered on or about June 22, 1926, upon surrender of such purchase certificates on that date, and interest to June 21, 1926, at the rate of six per cent per annum, will then be paid upon the installments previously paid. Holders of purchase certificates desiring to make advance payment of any installment may do so only on December 22, 1925, or March 22, 1926.

This warrant will be void and of no value, unless surrendered on October 22, 1925, either to National Trust Company at its office No. 200 Wall Street, New York City, or to Border Trust Company at its office in Detroit, Michigan, accompanied by payment of the subscription in full, or by payment of the first installment thereof. Failure to pay the second, third, or fourth installment, when and as payable, shall operate as a forfeiture of all rights in respect to the subscription and the installments previously paid thereon.

This warrant is transferable or divisible by assignment and may be so transferred or divided at the offices of the Company, No. 110 Broadway, New York, N. Y., or No. 2000 Tenth Avenue, Detroit, Michigan. On the back of this warrant are two forms. The first to be signed when subscription is made, and the second, which is an assignment requiring a witness, to be signed if the subscription privilege covered hereby is transferred or divided.

_____

Assistant Treasurer

NOTE.—The signature to this assignment must correspond with the name as written upon the face of this Warrant in every particular, without alteration or enlargement, or any change whatever.

SUBSCRIPTION

_____192—

To The Detroit Company:

The undersigned hereby subscribes for the shares of stock covered by this Warrant.

(Signature) _____

(Address) _____

ASSIGNMENT

_____192—

To The Detroit Company:

FOR VALUE RECEIVED, the right to make the within subscription is hereby assigned to _____

whose address is _____

(Signature) _____

Witness:

NOTE—For estates or trusts this assignment must be executed by all the executors, administrators, or trustees. Signatures not known to the company or its agents must be guaranteed.

Fig. 12.—Purchase Certificate.

No. BP —— PURCHASE CERTIFICATE —— Shares

For Shares of Stock of

THE DETROIT COMPANY

THIS CERTIFIES that —— under the terms of subscription warrants issued by the Detroit Company, dated October 1, 1925, has subscribed at par for —— shares, of the par value of $100 each, of the stock of The Detroit Company, and has paid the first installment of 25 per cent, namely, $——, on account of said subscription, and that the said subscriber, or his assigns, on payment, in funds current in New York City and free from collection charges, of the several further installments of the subscription price, as specified in said subscription warrants, to wit,

On December 22, 1925, 25 per cent;
On March 22, 1926, 25 per cent;
On June 22, 1926, 25 per cent;

and on surrender of this certificate at the office of National Trust Company, Agent of the Company, No. 200 Wall Street, New York City, will be entitled on or about June 22, 1926, to receive —— shares of stock of The Detroit Company, and also to receive interest at the rate of six per cent per annum on all installments previously paid, from the date of each payment to June 21, 1926.

Holders of purchase certificates desiring to make advance payment of any installment may do so only on December 22, 1925, or March 22, 1926.

This certificate must be returned at the times fixed for the second and third payments, so that receipt hereof may be endorsed hereon, and must be surrendered on June 22, 1926, when the last payment is due.

Failure to pay any installment on said subscription, when and as payable, shall operate as a forfeiture of all rights under this certificate, and in respect to the stock subscribed for as well as any installments previously paid.

This certificate is transferable by assignment, and may be so transferred on books kept for that purpose at the said office of National Trust Company, Agent of the Company.

IN WITNESS WHEREOF, THE DETROIT COMPANY has caused this certificate to be signed in its behalf by National Trust Company as its Agent, this 22d day of October, 1925.

THE DETROIT COMPANY
By National Trust Company, Agent
By
Assistant Secretary

Second installment has been paid on this certificate as required
THE DETROIT COMPANY
By National Trust Company, Agent
By
Assistant Secretary

Third installment has been paid on this certificate as required
THE DETROIT COMPANY
By National Trust Company, Agent
By
Assistant Secretary

While the above is a typical example of a capital subscription transaction from the point of view of a trust company, as subscription agent, there may be many variations. It is

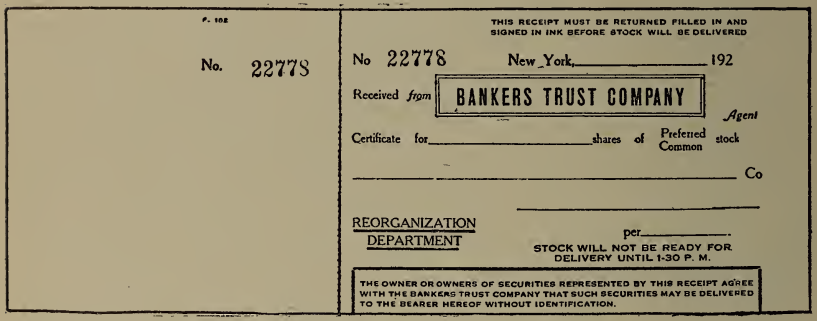
important for the trust company to see that its instructions are complete and explicit, that it has been duly authorized to perform its duties as subscription agent, and that the right of subscription has been properly authorized on behalf of its principal—the issuing corporation. All papers necessary to evidence these facts, properly certified, together with specimen warrants, subscription receipts, copies of circular letters, and so forth, should be filed with the trust company and approved by its counsel before it proceeds with its duties as subscription agent.

Subscriptions to securities do not necessarily involve the issuance of "rights." A bank or trust company is frequently requested to act as subscription agent on behalf of a corporation offering securities to other than its stockholders. The procedure in such cases is for the corporation to furnish the subscription agent with a certified list of the subscribers and the terms upon which subscriptions are to be received. The agent then accepts payment from the subscribers, issues receipts, and otherwise proceeds substantially as heretofore outlined. Where subscription warrants are not issued, or do not contain full instructions, it will be found of much practical assistance if the trust company will request the issuing corporation to enclose to its subscribers a printed form on which the subscriber is required to indicate to the subscription agent full instructions as to the issue and method of delivery of the new securities. A form of this kind may well cover such of the following points as may be pertinent to the transaction in question: (1) the full name, including the Christian or given name, in which the new securities are to be issued, (2) the full address of such person; (3) the amount remitted, and, if partial payments are permitted, whether such remittance is intended to be full payment; (4) a separate statement of any amount remitted to cover stock transfer taxes, if any such taxes are imposed, payment of which is not assumed by the issuing company (in nearly all cases any *original issue* tax which may be due is assumed by the issuing company)[3]; and (5) complete instructions as to the method of delivery or shipment of the new securities.

---

[3] See footnote, page 240.

Reorganization department records.—While the various reorganization and readjustment plans may differ widely as to details, the services performed by the reorganization department are more or less the same in each case. Hence, it is possible to standardize the departmental records. Those illustrated in this chapter are in use by the institution whose corporate trust system has been described in other chapters.[4] The security and cash tickets, vault control and general records conform to the corporate trust department system as described in Chapter IV (page 34).


F- 102

No. 22778

THIS RECEIPT MUST BE RETURNED FILLED IN AND SIGNED IN INK BEFORE STOCK WILL BE DELIVERED

No 22778 New York, _____ 192

Received from BANKERS TRUST COMPANY

Agent

Certificate for _____ shares of Preferred / Common stock

_____ Co

REORGANIZATION DEPARTMENT

per _____.

STOCK WILL NOT BE READY FOR DELIVERY UNTIL 1-30 P. M.

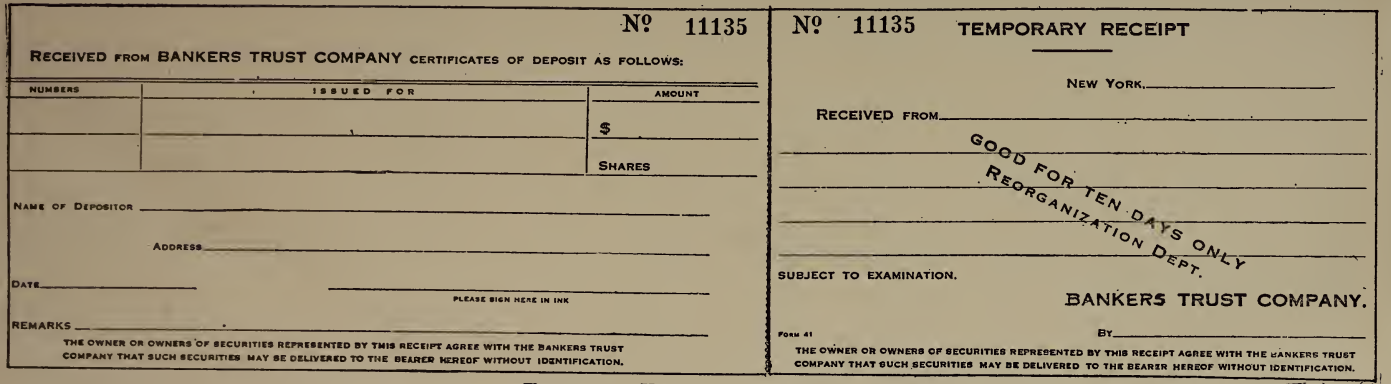
THE OWNER OR OWNERS OF SECURITIES REPRESENTED BY THIS RECEIPT AGREE WITH THE BANKERS TRUST COMPANY THAT SUCH SECURITIES MAY BE DELIVERED TO THE BEARER HEREOF WITHOUT IDENTIFICATION.

Form 38.—Reorganization Counter Ticket.

Upon receiving securities over its counter, the reorganization department issues a "counter ticket" in Form 38. The right-hand portion is handed to the depositor, to be presented at the department the following day as a receipt and surrendered against delivery to the depositor of the corresponding certificate of deposit. The left portion or stub of the ticket is attached to the deposited securities as a means of identification pending entry of the deposit on the records of the department.

Upon issuance of the certificate of deposit, the ticket stub is attached to it, to identify the item upon delivery the following day. Form 39 is a "temporary receipt" used if the department is not prepared to issue its formal receipt. Such a situation often arises, on the surrender of securities for deposit, prior to the filing with the depositary of an executed counterpart of a contemplated protective agreement.

[4] Bankers Trust Company, New York.



№ 11135

RECEIVED FROM BANKERS TRUST COMPANY CERTIFICATES OF DEPOSIT AS FOLLOWS:

NUMBERS	ISSUED FOR	AMOUNT
		$
		SHARES

NAME OF DEPOSITOR _____

ADDRESS _____

DATE _____ _____

PLEASE SIGN HERE IN INK

REMARKS _____

THE OWNER OR OWNERS OF SECURITIES REPRESENTED BY THIS RECEIPT AGREE WITH THE BANKERS TRUST COMPANY THAT SUCH SECURITIES MAY BE DELIVERED TO THE BEARER HEREOF WITHOUT IDENTIFICATION.

№ 11135 TEMPORARY RECEIPT

NEW YORK, _____

RECEIVED FROM _____

GOOD FOR TEN DAYS ONLY
REORGANIZATION DEPT.

SUBJECT TO EXAMINATION.

BANKERS TRUST COMPANY.

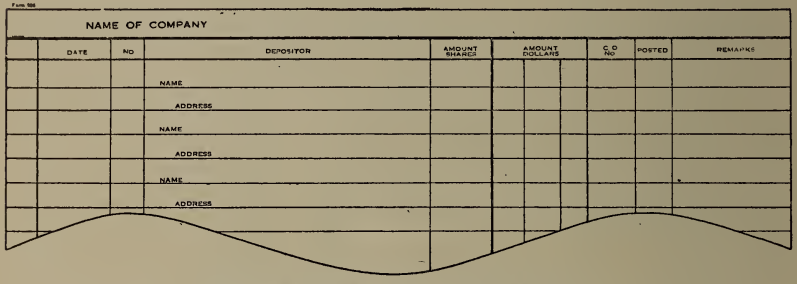
Form 41

BY _____

THE OWNER OR OWNERS OF SECURITIES REPRESENTED BY THIS RECEIPT AGREE WITH THE BANKERS TRUST COMPANY THAT SUCH SECURITIES MAY BE DELIVERED TO THE BEARER HEREOF WITHOUT IDENTIFICATION.

Form 39.—Temporary Receipt.

Form 40 is the "reorganization record," in which entries are made from the actual securities as they are deposited. It forms a chronological record of deposits. The columns from left to right are used to indicate: (1) the date of deposit; (2) the deposit number (the primary purpose of these numbers is to supply a vault index, so that it will be a



NAME OF COMPANY

	DATE	NO	DEPOSITOR	AMOUNT SHARES	AMOUNT DOLLARS	C.D. NO.	POSTED	REMARKS
			NAME					
			ADDRESS					
			NAME					
			ADDRESS					
			NAME					
			ADDRESS					

Form 40.—Reorganization Record.

simple matter, when necessary, to withdraw from the vault the identical securities deposited by a given depositor); (3) the name and address of the depositor; (4 and 5) the number of shares or principal amount of bonds or notes, as the case may be, deposited; (6) the serial number of the certificate of deposit issued against the deposited securities; (7) the

F318

NAME

ADDRESS

NAME OF COMPANY

DATE	AMT. BOND	CLASS	SHARES PFD.	SHARES COM.	VAULT FILE

Form 41.—Record of Depositors.

initial of the bookkeeper posting the entry to the record of depositors, next described; and (8) any other supplementary information which may be desirable. In addition to the chronological record of deposits, it is necessary that there be an alphabetical "record of depositors" which is kept in a card index file (Form 41) posted from the reorganization record. Form 42 is a "vault marker." In the case of each deposit one of these cards is filled out, showing (1) the deposit or file number; (2) the name of the depositor; and (3) the amount of the securities deposited. This card is fastened firmly to the face of the securities before they are filed in the vault and acts as a vault index.

REORGANIZATION DEPARTMENT

File No._____

DEPOSITOR

_____

$_____

Shares_____

Company _____

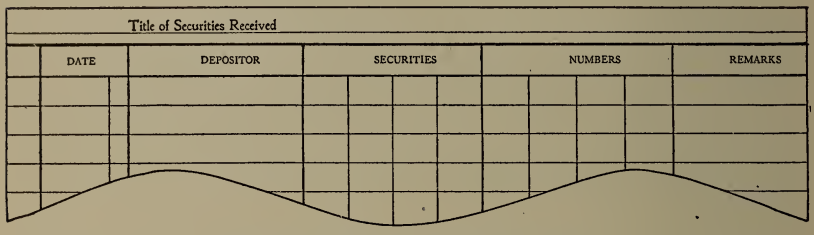
Security_____

F. 80

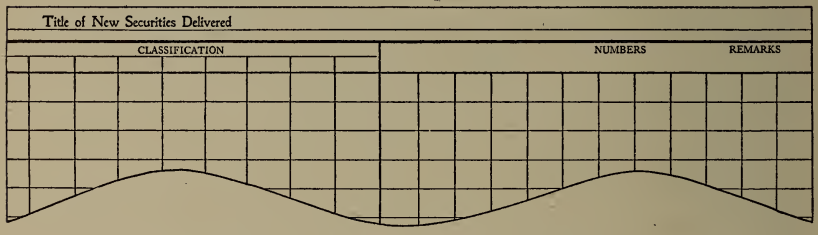
Form 42.—Vault Marker.

Form 43 is the record used in delivery of the new securities on consummation of a reorganization. The left-hand page is a record of the securities surrendered (ordinarily the certificates of deposit of the depositary), while the right-hand

page records the new securities delivered in exchange, in accordance with the plan of reorganization. In the case of bonds or notes deliverable under such a plan, the total required amount of such securities is usually delivered to the depositary before it commences to exchange its outstanding

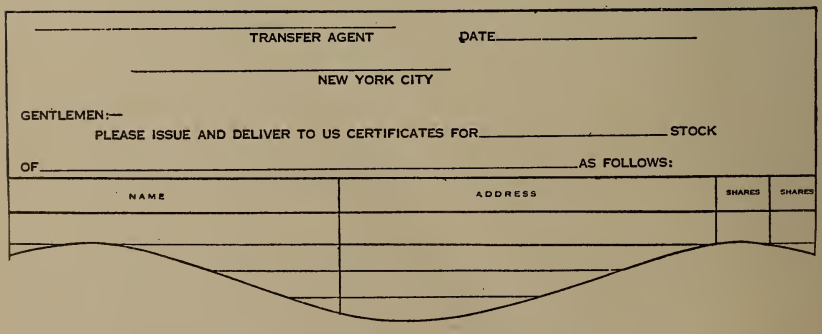


Form 43.—Delivery Record (Left).



Form 43.—Delivery Record (Right).

certificates of deposit. With stock, however, the situation is somewhat different, and the usual procedure is for the new corporation to issue shares, up to a stated number, upon requisition of the depositary. Form 44 is the requisition to



Form 44.—Requisition for Stock.

Copy to:

The ——— Telephone and Telegraph Company,
San Francisco, California

THE ——— TELEPHONE AND TELEGRAPH COMPANY

REORGANIZATION DEPARTMENT

PREFERRED CAPITAL STOCK

RECORD OF SUBSCRIPTIONS RECEIVED BY BANKERS TRUST COMPANY AT $85. PER SHARE ON OR BEFORE MAY 31, 1922 AND NON-NEGOTIABLE RECEIPTS ISSUED THEREFOR.

DATE	TICKET	SUBSCRIPTION WARRANTS SURRENDERED				SUBSCRIBER'S NAME	SUBSCRIBER'S ADDRESS	PAYMENT		N.Y. CERTIFICATES ISSUED	
		NAME	Partial	NUMBERS	SHARES			DOLLARS	Partial	NUMBER	SHARES

Form 47.—Subscription Record.

the transfer agent for use in such cases. Form 45 is similar in principle to Form 38, except that it is used on delivery of a variety of securities upon completion of a reorganization. Form 46 is used in furnishing lists of depositors to the

No. 207

NORTHERN ——— CORP.

_____ Shs. Dep. Receipt Pfd.

_____ Shs. Dep. Receipt Com

$_____ Ad. Int. Receipt Pfd.

$_____ Ad. Int. Receipt Com.

Left by _____

THIS RECEIPT MUST BE RETURNED FILLED IN AND SIGNED IN INK BEFORE SECURITIES WILL BE DELIVERED

No. 207 New York, _____ 192

Received from BANKERS TRUST COMPANY Depositary

$_____ 10 Year 7% Bonds Carrying Int. from Feb. 1, 1925

$_____ Part Paid Subscription Receipts;

_____ Shares of COMMON Stock;

_____ Options to Purchase Additional Securities

OF

THE NORTHERN ——— COMPANY

REORGANIZATION DEPARTMENT _____

per _____

THE OWNER OR OWNERS OF SECURITIES REPRESENTED BY THIS RECEIPT AGREE WITH THE BANKERS TRUST COMPANY THAT SUCH SECURITIES MAY BE DELIVERED TO THE BEARER HEREOF WITHOUT IDENTIFICATION.

Form 45.—Reorganization Counter Ticket.

committee or others authorized to receive them. Form 47 (p. 225) illustrates the record used in connection with the subscription to stock or other securities as described in the paragraphs relating to capital subscriptions. This sheet may

BANKERS TRUST CO.
DEPOSITARY

LIST OF DEPOSITORS OF THE _____ COMPANY

_____ STOCK

_____ BONDS _____ 19

DEPOSITOR	ADDRESS	SHARES OR $	REMARKS

Form 46.—List of Depositors.

be handwritten or typewritten in two or more copies, the original forming the departmental record and the duplicates being used as reports to the issuing corporation, its transfer agent, or elsewhere as required.

Chapter XVII

STOCK TRANSFER DEPARTMENT

Stock transfer department.—As previously stated, the stock transfer department of a bank or trust company acts as agent for corporations and others (e. g., voting trustees) in issuing certificates representing shares of the capital stock of such corporations, or a participating interest therein, and in recording changes in the ownership of the stock, or participating interest, on books which it keeps for its principal. In some corporations the entire capital stock is of one kind or class; other corporations issue two or more classes of stock, the more familiar classifications being common and preferred. The ownership of stock is evidenced by certificates registered in the owner's name. (See pp. 228-232).

It will be noted that, in the forms of stock certificates given below, the common stock certificate is stated to be of no par value, whereas the preferred stock certificate expresses a par value of $100 per share. The practice of issuing no par value stock has increased materially in recent years and there are now numerous issues of common and some issues of preferred stock of no par value. However, preferred stock of no par value must express an amount in dollars to indicate the extent, if any, to which the holders of the preferred stock would be entitled to participate in a distribution of assets of the corporation before any distribution could be made to common stockholders. Current practice, to some extent, is varying the older classifications of common and preferred with such designations as "A" and "B." In any case the senior class of stock, whether designated as preferred or "A," has certain rights or preferences which distinguish it from the junior class or classes. The preference may be as to dividends only, or it may include the right to participate in liquidation prior to the holders of junior securities.[1] These features are mentioned in passing, but it is intended in this chapter to discuss, chiefly, the mechanics of the transfer of ownership in stock.

---

[1] For a discussion of the classes of stock, see Arthur S. Dewing, "Financial Policy of Corporations" (Volume I).

Fig. 13.—Common Stock Certificate (Front).

Certificate for Less Than 100 Shares

Certificate for Less Than 100 Shares

MOTOR CORPORATION

Number .....

..... Shares

INCORPORATED UNDER THE LAWS OF THE STATE OF MICHIGAN

AUTHORIZED COMMON STOCK 600,000 SHARES
WITHOUT NOMINAL OR PAR VALUE

THIS CERTIFICATE IS TRANSFERABLE EITHER IN THE CITY OF NEW YORK OR THE CITY OF DETROIT, MICHIGAN

THIS IS TO CERTIFY that .....
is the owner of ..... shares WITHOUT NOMINAL OR PAR VALUE OF THE COMMON CAPITAL STOCK OF MOTOR CORPORATION, full paid and non-assessable, transferable in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. The rights, preferences, privileges, and restrictions or limitations respectively attaching to the First Preferred Stock and the Common Stock of the Corporation are set forth in full in the Statement on the reverse of this Certificate and the holder hereof, by accepting this certificate, assents to and is bound by all the said provisions. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS The Seal of the Corporation and the signatures of its duly authorized officers this .....

.....
Vice President.

.....
Secretary.

Countersigned .....
NATIONAL TRUST COMPANY (New York)
Transfer Agent
By .....
Ass't Secretary

Registered .....
THE NATIONAL BANK OF NEW YORK
Registrar
By .....
Assistant Cashier

Tens	Units
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
0	0

Fig. 13.—Common Stock Certificate (Back).

STATEMENT OF THE RIGHTS, PREFERENCES, PRIVILEGES, AND RESTRICTIONS OR LIMITATIONS, RESPECTIVELY, ATTACHING TO THE EIGHT PER CENT CUMULATIVE FIRST PREFERRED STOCK AND THE COMMON STOCK OF THE MOTOR CORPORATION.

A. The Preferred Stock shall be entitled to receive out of surplus profits dividends cumulative from the quarterly dividend date next preceding the day of issue, or from the day of issue if it be a quarterly dividend day, at the rate of eight per cent (8%) per annum and no more, payable quarterly on the fifteenth day, to stockholders of record on the first day, of each of the months of February, May, August and November, in each year, before any dividends shall be paid on the Common Stock, which Common Stock, subject to the conditions hereinafter set forth, shall be entitled to receive all net income, profits or surplus distributed as dividends in excess of the said cumulative dividends of eight per cent (8%) per annum, payable on the Preferred Stock.

B. On any voluntary distribution of capital assets, the Preferred Stock shall be entitled to receive an amount equal to 115 per cent of the par value thereof, and any unpaid dividends accumulated thereon, and no more; and on any other distribution of capital assets, the Preferred Stock shall be entitled to receive an amount equal to 100 per cent of the par value and any unpaid dividends accumulated thereon, and no more. After distribution shall have been made to the Preferred Stock as above provided, the Common Stock of the Corporation shall be entitled to receive the remainder of such capital assets.

C. The Preferred Stock shall have no preëmptive right in or right to subscribe for any additional stock of whatever class which may hereafter be issued by the Corporation.

D. The Preferred Stock shall be redeemed on September 1, 1949, at par; but the Corporation reserves the right to redeem or retire any or all of the Preferred Stock prior to the said date at 115 per cent of the par value thereof and all unpaid dividends accumulated thereon to the date fixed for such redemption. If less than the whole amount of outstanding Preferred Stock be so redeemed at any time, the Stock to be so redeemed shall be selected by lot, in such manner as the Board of Directors may determine. At least thirty days' notice in advance of such redemption shall be mailed to each holder of Preferred Stock to be redeemed, at his address registered with the Corporation, and such other notice shall be given in the manner to be fixed by the By-laws; and on and after the date fixed for such redemption the said Stock shall cease to bear further dividends, and the respective holders thereof shall have no other right or interest therein, except to receive payment therefor, at the said redemption price, upon presentation and surrender of their respective certificates.

E. Within ninety days after the termination of each fiscal period, commencing with the fiscal period ending December 31, 1920, the Corporation shall set aside in a Sinking Fund a sum in cash equal to at least fifteen per cent of the balance of its net income for such fiscal period, remaining after the payment of current dividends on the Preferred Stock during such period and all accumulated dividends, if any (but in no event less than a sum equal to three per cent of the largest aggregate par value of Preferred Stock at any time issued and outstanding), and the Corporation shall thereupon apply the said Sinking Fund, either to the purchase of Preferred Stock in the open market or at private sale, at prices not exceeding a sum equivalent to 115 per cent and accrued dividends, or if the Corporation shall be unable to apply

all the moneys in the Sinking Fund to the purchase of Preferred Stock prior to July 1 in any year, then it shall apply the moneys so remaining to the redemption as above provided, on August 15 next succeeding, of so much of the Preferred Stock as the said moneys shall be sufficient to retire at the said redemption prices. All the Preferred Stock so purchased or redeemed shall forthwith be canceled, and the total authorized amount of Preferred Stock of the Corporation shall be reduced accordingly.

F. The Corporation will at all times maintain the aggregate amount of its net current assets and the net current assets of its constituent companies at an amount at least equal to 125 per cent of the par value of the outstanding Preferred Stock, and it will at all times maintain the aggregate amount of its net tangible assets and the net tangible assets of its constituent companies at an amount equal to at least 250 per cent. of the par value of the outstanding Preferred Stock.

G. Except as otherwise expressly provided by law, the Preferred Stock shall have no right to vote for the election of directors so long as the Corporation shall not be in default as hereinafter provided. In case, however, and whenever, the Corporation shall be in default in maintaining net current assets or net tangible assets at the respective amounts hereinbefore stipulated, and any such default shall continue for the period of six successive months, or if the Corporation shall be in default for the period of sixty days in the payment of any quarterly dividend or in setting aside any required Sinking Fund installment, the Preferred Stock shall thereafter have equal voting rights with the Common Stock (on the basis of one vote for every ten dollars par value of Stock) for any and all purposes, including the election of directors; and such rights shall continue in the Preferred and Common Stocks, respectively, until all matters in respect of which the Corporation was in default shall have been made good and all accumulated dividends have been paid in full, at which time the right to vote shall again vest in the Common Stock exclusively; provided, that if, at any time, the Corporation shall be in default in the payment of any five consecutive quarterly dividends, thereupon the right to vote for the election of directors shall pass to the Preferred Stock to the complete exclusion of Common Stock, and such right shall continue in the Preferred Stock, exclusively, until all accumulated dividends shall have been paid in full, at which time the said right shall again vest in the Common Stock exclusively; provided, that the Board of Directors elected by the holders of Preferred Stock shall not have the power to retire or redeem Preferred Stock except through the operation of the Sinking Fund.

H. The Corporation shall not execute any mortgage upon any of its fixed assets, or cause or suffer any lien in the nature of a mortgage to be placed thereon (except to secure the purchase price of property by a purchase money mortgage of not exceeding seventy-five per cent. of the fair value thereof) except with the prior consent in writing of seventy-five per cent. in amount of the outstanding Preferred Stock; and the Corporation shall not, either directly or indirectly, make, issue or negotiate any issues of secured or unsecured bonds, notes, debentures or other funded obligations by their terms payable more than one year from the date of issuance thereof, or become or be an accommodation endorser, guarantor or surety on any notes, bills, bonds, debentures or other obligations for the payment of money except those of a constituent company, if the holders of twenty-five per cent. or more of the oustanding Preferred Stock shall object thereto.

I. The Corporation shall not cause, suffer or permit any constituent company to make, issue or negotiate any issue of bonds, notes, debentures or other funded obligations by their terms payable more than one year from the date

of issuance thereof, or to execute or place any mortgage, or lien in the nature of a mortgage, upon any of the fixed assets of such constituent company, except to secure the purchase price of property by a purchase money mortgage of not exceeding seventy-five per cent of the fair value thereof.

J. In each fiscal period, the Corporation shall cause its books and accounts and the books and accounts of its constituent companies, to be audited by a certified public accountant of recognized standing; and if, in any fiscal period, the Corporation shall fail to cause such audit to be made, then, upon the written request of twenty-five per cent. or more of the outstanding Preferred Stock, the Corporation shall permit such audit to be made by certified public accountants designated in such request.

K. No class of stock shall hereafter be created ranking prior to or on a parity with the Preferred Stock in the payment of dividends or the distribution of capital assets. The par value of Preferred Stock issued and outstanding shall at no time exceed two-thirds of the Corporation's actual capital paid in.

L. No Preferred Stock, other than the initial issue of $2,500,000 par value, shall at any time be issued unless the average net income of the Corporation for the period of twenty-four months ending not more than sixty days next preceding the issuance thereof shall have been at least equal to two times the aggregate annual dividend requirements of the Preferred Stock outstanding and that proposed to be issued; nor shall the Corporation in any event issue any additional Preferred Stock if the Corporation shall be in default in the payment of any quarterly Preferred Stock dividend or in setting aside any Sinking Fund installment, or if, by the issuance of such additional Preferred Stock, the respective ratios borne to the Preferred Stock then outstanding, including that proposed to be issued, by the net current assets or the net tangible assets of the Corporation and its constituent companies shall be reduced below the percentages hereinbefore specified. In the computation of the average annual net income for the purpose of this Article L there shall be included the average annual net income for the same period of any property or plant to be acquired with such additional Preferred Stock or with the proceeds of the sale thereof, and also the amount of the annual interest charge for the same period on loans to be discharged by the sale of such additional Preferred Stock; and in the computation of net current assets and net tangible assets for the purpose of this Article L there shall be included the proceeds of the sale of such additional Preferred Stock of the net current assets and the net tangible assets respectively to be acquired with such proceeds.

For the definition of the terms herein employed, reference is hereby made to the Articles of Association of the Corporation, as amended, a duly certified copy of which is on file with the Transfer Agent.

Fig. 14.—Preferred Stock Certificate.

Certificate for Less Than 100 Shares

Certificate for Less Than 100 Shares

AMERICAN PRODUCTION COMPANY

PREFERRED STOCK $44,000,000 — AUTHORIZED CAPITAL — COMMON STOCK $44,000,000

SHARES $100 EACH

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY

Number .... Shares

THIS CERTIFIES THAT

.....

is the owner of ..... full paid and non-assessable shares of the PREFERRED STOCK OF AMERICAN PRODUCTION COMPANY, transferable only on the books of the Company by the holder in person, or by Attorney on surrender of this certificate.

The Preferred Stock, as more fully provided in the Certificate of Incorporation, is entitled in preference to the Common Stock, to cumulative dividends at the rate of seven per centum yearly and on distribution of assets to payment of its par value and the amount of such cumulative dividends then unpaid but to no other dividend or payment.

This certificate is not valid until countersigned by the Transfer Agent and the Registrar.

WITNESS the signatures of its duly authorized officers, this ..... day of .....19....

.....
Vice President

.....
Ass't Treasurer

Registered this ..... day of.....

CONSOLIDATED NATIONAL BANK
Registrar

By .....
Ass't Cashier

Countersigned .....

NATIONAL TRUST COMPANY (New York)
Transfer Agent

By .....
Ass't Secretary

Tens	Units
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
0	0

Signatures on stock certificates.—As a rule, stock certificates are signed by two officers of the issuing corporation under its corporate seal. A corporation whose stocks are active generally delivers a supply of stock certificates, signed in blank, to its transfer agent, which issues and countersigns them from time to time as required. Thereafter the certificates are also signed by a registrar, whose duties will be discussed in the next chapter. Let us first examine into the principal duties of the transfer agent.

Appointment of transfer agent for corporation; documents to be received.—There should be in the files of the transfer agent proper evidence of: (1) authorization of the issue of all outstanding shares (or, in the case of a newly organized corporation, the shares presently to be issued); (2) authority of designated officers to sign stock certificates on behalf of the corporation and to instruct the transfer agent in connection with its duties; (3) formal appointment of the transfer agent.

The evidence required, as enumerated in the preceding paragraph, is substantially as follows:

1. A copy of the corporation's charter or articles of incorporation (with amendments to date) certified by the secretary of state of the state in which the corporation is organized. This document will evidence the creation of the corporation and also the due authorization of the capital stock of such corporation.

2. A copy of the corporation's by-laws certified by its secretary or assistant secretary under its corporate seal. The by-laws lay down rules under which the corporation may act. Frequently the by-laws of a corporation are quite general in their terms, providing, for example, that the duties and authority of its officers shall be such as may be delegated by the board of directors. In such a case the transfer agent will also require certified copies of the resolution or resolutions of the board of directors granting authority to the officers of the corporation in respect to the issuance of stock.

Form 48.—Resolution Appointing Transfer Agent.

Transfer Agent—(Stock Outstanding)

CERTIFIED COPY OF RESOLUTIONS
of the
BOARD OF DIRECTORS
of
_____

On motion duly seconded, it was

RESOLVED:

FIRST: That Bankers Trust Company, of New York, N. Y., be and it is hereby appointed agent of this company, with the title "Transfer Agent," for the transfer of certificates

for the —— capital stock of this Company, of which there are now outstanding —— shares of said preferred stock and —— shares of said common stock.

SECOND: That for the purpose of an additional original issue of the certificates representing the stock, the Transfer Agent is hereby directed:

(1) To record and countersign as Transfer Agent certificates in such names, and for not exceeding

—— shares of such —— stock, of the par value of $—— each
—— shares of such —— stock, of the par value of $—— each
—— shares of such —— stock, of the par value of $—— each

when signed by* the President or a Vice-President and the Treasurer or Secretary or an Assistant Treasurer or an Assistant Secretary of this Company, and in such amounts, as this Company may direct in a writing, signed by the —— and/or —— under the seal of this Company, and

(2) To deliver the certificates to the Registrar of this Company, for registration and countersignature and to deliver the certificates when so countersigned to, or upon the written order of, the —— of this Company;

THIRD: That the Transfer Agent be and it is hereby authorized and directed to make transfers from time to time upon the books of this Company of such certificates for such capital stock, and of the certificates for — shares of the preferred and — shares of the common stock of this company now outstanding as may be surrendered for transfer, properly endorsed and duly stamped as may be required by the laws of †——, of New York, and of the United States, and signed by the proper officers of this Company, as provided in paragraph Second of these resolutions, and, as to certificates issued by said Transfer Agent, countersigned by the Transfer Agent and the Registrar, and to record and countersign new certificates accordingly when they shall have been signed by the proper officers of this Company, as provided in paragraph Second of these resolutions, and to deliver the certificates to the Registrar for countersignature, as provided in paragraph Second and when so countersigned to deliver them to or upon the order of the person entitled thereto.

---

* These resolutions should correspond to the provisions of the charter or certificate of incorporation, and by-laws.

† Here insert State of incorporation, if stamps are required by the laws of that State.

FOURTH: That specimen signatures of the officers of this Company authorized to sign certificates of stock as aforesaid, and of the officers of the Registrar authorized to sign for the Registrar, and specimen stock certificates, be lodged forthwith with the Transfer Agent to be used by it for purposes of comparison; and that the Transfer Agent shall be protected and held harmless in recognizing and acting upon any signature or certificate believed in good faith to be genuine. When any officer of this Company or of the Registrar shall no longer be vested with authority to sign for this Company or for the Registrar, as the case may be, written notice thereof shall immediately be given to the Transfer Agent and until receipt of such notice the Transfer Agent shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by it in good faith to be such genuine signature.

FIFTH: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Company not inconsistent with its by-laws, to sign certificates of stock on behalf of this Company, and in like manner additional officers may be appointed to sign on behalf of the Registrar, and in every such case certified copies of the resolutions effecting the appointments and specimen signatures of such officers shall forthwith be lodged with the Transfer Agent.

SIXTH: That when the Transfer Agent deems it expedient, it may apply to ——, City of —— State of ——, counsel for this Company, or to its own counsel for instructions or advice, and for any action in accordance with such instructions or advice this Company will fully protect and hold it harmless from any and all liability.

SEVENTH: In the event that any such certificate shall become lost or destroyed before any new certificate or certificates shall be issued in lieu thereof, a satisfactory bond shall be required in such amount as may be provided by the by-laws of this Company, and in any event not less than the value of such certificate, wherein the Transfer Agent shall be named as one of the obligees. The bond shall be in a form satisfactory to the Transfer Agent.

EIGHTH: That the —— President and the —— Secretary of this Company be and they hereby are directed to certify a copy of these resolutions under the seal of this Company and to lodge the copy, together with certified specimen certificates of the stock of this Company in the forms duly adopted by it, certified copies of the charter or certificate of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of the Company, with the Transfer Agent, and to furnish to the Transfer Agent certified copies of any amendments that may from time to time be made to the charter or certificate of incorporation or by-laws.

We, the undersigned, —— President and —— Secretary, do hereby certify that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of the —— (hereinafter called "Company"), duly called and held at No. —— in the City of ——, State of ——, on the —— day of ——, 19—, a quorum being present.

We further certify that the annexed certificates are true and correct specimens of the certificates of the capital stock of the Company which have been duly adopted by the Company, and the annexed schedule or signature card or cards, set forth the officers of the Company and of ——, Registrar, authorized to sign such certificates, and that the signatures set opposite their respective names are specimens of the genuine signatures of such officers.

We further certify that the Company was duly organized under the laws of —— and that under the accompanying charter or certificate of incorporation and all amendments thereto, certified by the Secretary of the State, the Company has an authorized capital stock of $—— subdivided into

—— shares of the par value of —— each of —— stock,
—— shares of the par value of —— each of —— stock,
—— shares of the par value of —— each of —— stock,

WITNESS our hands and the seal of the Company this —— day of ——, 19—.

President

(Corporate Seal) *Secretary*

Form 48A.—Resolution Appointing Transfer Agent (With Co-transfer Agent).

Co-Transfer Agent.

CERTIFIED COPY OF RESOLUTIONS
of the
BOARD OF DIRECTORS
of
——

On motion duly seconded, it was

RESOLVED:

FIRST: That —— of ——, ——, of ——, and Bankers Trust Company, of New York, N. Y., be and they are hereby appointed agents of this Company, each with the title of Transfer Agent for the transfer of certificates

for the { —— / —— / —— } capital stock of this Company

SECOND: That for the purpose of the original issue of said stock, said Transfer Agents are hereby directed

(1) To record and countersign as Transfer Agent certificates in such names, and for not exceeding

—— shares of —— stock
—— shares of —— stock
—— shares of —— stock

of the par value of —— each, when signed by* the President or a Vice-President and the Treasurer or Secretary or an Assistant Secretary of this Company, in such amounts, as this Company may direct in writing, signed by the —— and/or —— under the seal of this Company; and

(2) To deliver said certificates to the Registrar in the same City, as the Transfer Agent so countersigning, viz:—

—— in ——, —— or —— in New York, for registration and countersignature and to deliver said certificates when so countersigned to, or upon the written order of, the —— of this Company;

* These resolutions should correspond to the provisions of the charter or certificate of incorporation, and by-laws.

PROVIDED, HOWEVER, that the stock to be originally issued by each Transfer Agent be limited as follows:

—— { —— shares of such —— stock,†
—— shares of such —— stock,
—— shares of such —— stock,

—— { —— shares of such —— stock,
—— shares of such —— stock,
—— shares of such —— stock,

Bankers Trust Company { —— shares of such —— stock,
—— shares of such —— stock,
—— shares of such —— stock,

THIRD: That said Transfer Agents or either of them be and they are hereby authorized and directed to make transfers from time to time upon the books of the Company of such certificates of such capital stock as may be surrendered for transfer, properly endorsed and duly stamped as may be required by the laws of ‡——, of New York, and of the United States, and signed by the proper officers of the Company, as provided in Paragraph Second of these resolutions, and countersigned by any Transfer Agent and any Registrar, and to record and countersign new certificates accordingly when the same shall have been signed by the proper officers of the Company, as provided in Paragraph Second of these resolutions, and to deliver said certificates to the proper Registrar for countersignature, as provided in said Paragraph Second, and when so countersigned to deliver the same to or upon the order of the person entitled thereto.

FOURTH: It is the intention and purpose of these resolutions that certificates of the stock of this Company shall be interchangeably transferable in the cities of ——, ——, and New York, N. Y. The fact of the recording and countersignature of new certificates, whether by way of original issue or upon a transfer, shall be advised immediately by mail by the Transfer Agent countersigning the same to the other Transfer Agents; and each Transfer Agent shall be fully protected and held harmless by this Company by reason of its failure or refusal to transfer any certificates countersigned by another Transfer Agent when it shall not have received such notice of the issue or countersignature of such certificates.

FIFTH: That specimen signatures of the officers of this Company authorized to sign certificates of stock as aforesaid, and of the officers of the respective Transfer Agents and Registrars authorized to sign for said respective Transfer Agents and Registrars, and specimen stock certificates, be lodged forthwith with each of said Transfer Agents to be used by them and each of them for purposes of comparison; and that said Transfer Agents and each of them shall be protected and held harmless in recognizing and acting upon any signature or certificate believed in good faith to be genuine. When any officer of the Company or of any Transfer Agent or Registrar shall no longer be vested with authority to sign for the Company, or for such Transfer Agent or Registrar, as the case may be, written notice thereof shall immediately be given to each Transfer Agent and until receipt of such notice said Transfer Agents shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by them or any of them to be such genuine signature.

† The sum of these amounts should equal the amount authorized under (1). Where possible, confine original issue to one Transfer Agent.

‡ Here insert state of incorporation, if stamps are required by the laws of that State.

SIXTH: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Company not inconsistent with its by-laws, to sign certificates of stock on behalf of this Company, and in like manner additional officers may be appointed to sign on behalf of the respective Transfer Agents and Registrars, and in every such case certified copies of the resolutions effecting such appointments and specimen signatures of such officers shall forthwith be lodged with the Transfer Agents.

SEVENTH: In the event that any such certificate shall become lost or destroyed before any new certificate or certificates shall be issued in lieu thereof, a satisfactory bond shall be required in such amount as may be provided by the by-laws of this Company, and in any event not less than the value of such certificate, wherein the Transfer Agent shall be named as one of the obligees. The bond shall be in a form satisfactory to the Transfer Agent.

EIGHTH: That when any of said Transfer Agents deems it expedient, it may apply to —— of —— City of ——, State of ——, counsel for this Company or to its own counsel, for instructions or advice, and for any action in accordance with such instructions or advice this Company will fully protect and hold it harmless from any and all liability. None of said Transfer Agents shall be in any manner liable for any act or omission of any other Transfer Agent.

NINTH: That the —— President and the —— Secretary of the Company be and they hereby are directed to certify a copy of these resolutions under the seal of this Company and to lodge the same, together with certified specimen certificates of the stock of this Company in the forms duly adopted by it, certified copies of the charter or certificate of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of the Company, with each of said Transfer Agents, and to furnish to each of said Transfer Agents such certified copies of any amendments that may from time to time be made to such charter or certificate of incorporation or by-laws.

We, the undersigned, —— President and —— Secretary, do hereby certify that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of said Company, duly called and held at No. —— in the City of ——, State of ——, on the —— day of ——, 19—, a quorum being present.

We further certify that the annexed certificates are true and correct specimens of the certificates of the capital stock of said Company which have been duly adopted by said Company. We further certify that the annexed schedule or signature card or cards, set forth the officers of said Company and of ——, and ——, Transfer Agents and ——, ——, and ——, Registrars, authorized to sign such certificates, and that the signatures set opposite their respective names are specimens of the genuine signatures of such officers.

We further certify that said Company was duly organized under the laws of —— and that under the accompanying certificate of incorporation and all amendments thereto, certified by the Secretary of the State, the Company has an authorized capital stock of $—— subdivided into —— shares of the par value of —— each of —— stock, —— shares of the par value of —— each of —— stock, and —— shares of the par value of —— each of —— stock.

WITNESS our hands and the seal of the Company this —— day of ——, 19—.

President

(Corporate Seal)

Secretary

3. A copy, certified by the proper officers of the company, under seal, of the resolutions of the board of directors,[2] appointing the transfer agent and outlining its authority. The forms of such resolution, as adopted by a trust company in New York, for standard use, are given on pages 234 to 238.

While the forms explain themselves, it is perhaps well to emphasize the desirability of naming attorneys to whom the transfer agent is directed to look for all necessary legal advice, and the statement that the transfer agent shall be under no liability when acting upon the advice of such attorneys. The transferring of stock is a highly technical matter and legal questions will continually arise. Therefore, it is a wise precaution for the transfer agent at the time of its appointment to require explicit instructions as to the attorneys upon whose advice it is authorized to rely.

4. A certificate by the secretary or assistant secretary, under the corporate seal, of the due election or appointment of all officers of the corporation, authorized to take any action in respect of the issue or transfer of its stock.

5. Specimen signatures of all the officers, covered by the certificate referred to in item 4.

All documents received in support of an appointment should be submitted to counsel for approval on behalf of the transfer agent.

Original issues of stock.—In the case of a new corporation, one of the first duties of a transfer agent will concern the issuance and delivery of certificates representing stock to the amount authorized by the charter or such part thereof as the corporation may direct the transfer agent to issue. From time to time the corporation may, through amendment to its charter, increase (or reduce) the amount of its authorized stock, in which case appropriate evidence should be filed with the transfer agent and submitted to its counsel for approval before action thereunder is taken by the transfer agent.

---

[2] Under some circumstances the transfer agent might require evidence of appropriate action by the corporation's stockholders.

At the present time (1926) every original issue of stock is subject to the Federal stamp tax, under the Federal Revenue Act of 1926. The transfer agent must keep currently informed as to the laws imposing such taxes and the regulations thereunder issued by the Federal authorities.[3]

When the transfer agent is acting in connection with stock listed on the New York Exchange (and other stock exchanges have similar requirements), it must report to the Committee on Stock List of the Exchange any original issues of stock, so that the Committee, if its requirements have been met, may notify the registrar of the issue.[4] In the absence of such notification the registrar, under its agreement with the Stock Exchange, will be obliged to withhold registration of the certificates.

In some cases the original issue of stock may require the approval of a governmental body such as the Interstate Commerce Commission (as to railroad stocks) or one of the various state commissions. Evidence of the approval of any such body having jurisdiction of the original issue of stock should be filed with the transfer agent.

Voting trust certificates.—In acting as transfer agent for voting trust certificates the duties and responsibilities of the agent are the same, generally, as in the transfer of stock. The transfer agent is appointed by its principal, the voting trustees, not by the corporation. The authority of the voting trustees

---

[3] Federal stamp tax. The following is a quotation from the Federal Revenue Act of 1926, Section 807, Schedule A, Part 2; which imposes the existing tax on original issues of shares of stock: "Capital stock, issued: On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, on each $100 of face value or fraction thereof, 5 cents: *Provided,* That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of $100 per share, in which case the tax shall be 5 cents on each $100 of actual value or fraction thereof, or unless the actual value is less than $100 per share, in which case the tax shall be 1 cent on each $20 of actual value, or fraction thereof.

"The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued."

Among the authoritative services on Federal and New York State transfer taxes, are those of Prentice-Hall, Inc., and The Corporation Trust Company.

[4] The listing requirements of the New York Stock Exchange are reprinted on page 441 et seq.

is derived by virtue of a voting trust agreement between the trustees and such stockholders as may deposit their stock thereunder and accept, in exchange, voting trust certificates. Such an agreement is put into effect when it is desired to concentrate the voting control of a corporation in a few hands.[5]

The usual arrangement is for the transfer agent (1) to receive certificates of stock (properly assigned for transfer and accompanied by the necessary transfer tax stamps) from either the voting trustees or the stockholders; (2) to transfer this stock to the names of the voting trustees; and (3) to issue and deliver to the depositors voting trust certificates for a like number of shares. The stock certificates should be deposited with the custody or trust department of the institution which acts as transfer agent, to be released only with the consent of the transfer department, which the latter will give only pursuant to the provisions of the agreement and upon surrender for cancellation of voting trust certificates representing an equal number of shares. Dividends paid by the corporation on the stock held by the voting trustees are usually distributed, as received, to voting trust certificate holders.

The duration of voting trusts sometimes is limited by statute —in New York to ten years.

A typical voting trust certificate reads as follows:

Fig. 15.—Voting Trust Certificate.

CENTRAL MILLING COMPANY

No. —— —— Shares

Preferred Stock Voting Trust Certificates

This certifies, that, on March 16, 1926, —— will be entitled to receive a certificate or certificates, expressed to be fully paid, for —— shares of one hundred dollars each, in the preferred stock of the Central Milling Company, and, in the meantime, to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names. Until the actual delivery of such stock certificates, the Voting Trustees shall possess, in respect to any and all such stock, and shall be entitled, in their discretion, to exercise, all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said Company except as expressly limited in the agreement in pursuance of which this certificate is issued, it being

[5] A comprehensive treatment of this subject will be found in Harry A. Cushing's "Voting Trusts."

expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued pursuant to, and the rights of the holder are subject to, and limited by, the terms and conditions of a certain agreement dated the sixteenth day of February, 1921, between certain holders of voting trust certificates and of the preferred stock and the undersigned voting trustees, filed with said company.

No stock certificate shall be due or deliverable hereunder before the sixteenth day of March, 1926, but the Voting Trustees may, in their uncontrolled discretion, make earlier delivery thereof.

This certificate is transferable only on the books of the Voting Trustees by the registered holder hereof, either in person or by attorney duly authorized, according to rules established for that purpose by the Voting Trustees, and on surrender hereof; until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, but they shall not be required to deliver stock certificates hereunder without surrender hereof.

This certificate is not valid unless duly signed on behalf of the undersigned Voting Trustees by National Trust Company (their agent) and also registered by First Trust Company of New York, as Registrar.

In Witness Whereof, the undersigned Voting Trustees have caused this certificate to be signed by National Trust Company, their duly authorized agent, this —— day of ——, one thousand nine hundred and ——.

Henry Fowler,
Clarence Weekes,
John Howell,
Voting Trustees.

By NATIONAL TRUST COMPANY.
Their Agent.

Registered ——————————
First Trust Company of New York
Registrar
By
Assistant Secretary

By
Assistant Secretary

Transfers.—One of the most technical duties of the transfer agent is to pass upon the validity of the assignments of stock certificates presented for transfer. The assignment[6] is

[6] The following is the form of stock assignment as approved by the New York Stock Exchange:

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.

For value received —— hereby sell, assign and transfer unto —— shares of the *capital stock represented by the within certificate and do hereby irrevocably constitute and appoint —— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated —————————— 19—.

In presence of ——————————

——————————

*On certificates without nominal or par value the word "capital" may be omitted.

usually made on the form provided on the back of the stock certificate itself, but may be made on a separate assignment ("transfer power") supplied, in standard forms, by law stationers. Practically all forms of stock assignment contain an appointment of an attorney to record the transfer on the books of the corporation. It will be noted in the forms of stock certificates illustrated on pages 228 and 232, that stock is tranferable "on the books of the Company, by the holder in person or by Attorney," upon surrender of the certificate properly endorsed.[7] The stockholder may, accordingly, personally enter a transfer of stock upon the stock records of the company. This requirement, without alternative, would be an inconvenience to most stockholders and probably something of a nuisance to the transfer agent. As a practical matter, the name of the attorney to make the transfer is left blank when the stockholder executes an assignment, and the transfer is recorded by an employee of the transfer agent, acting as the attorney of the stockholder. The name of this employee is inserted, in the assignment, as the attorney of the transferor.

Power of substitution.—Should an attorney be named, other than the transfer agent's employee, such attorney personally may make the transfer. As a practical matter he usually executes a power of substitution,[8] leaving blank the name of the substitute so that the transfer agent may insert the name of its employee.

Assignments.—The transfer agent, on behalf of its principal, is required to pass on the validity of each assignment presented as a basis for the transfer of stock. As previously

---

[7] The phraseology varies, as will be noted by a comparison of the two stock certificates illustrated.

[8] The following is the usual form of power of substitution:

— hereby irrevocably constitute and appoint ———— substitute to transfer the within named stock under the foregoing power of attorney, with like power of substitution.

Dated ———————— ————————————

Witness:

————————

explained, the form of assignment is provided on the back of the stock certificate and if this form, or a standard detached form is used, there can be no question as to the form of the assignment, but this point should be carefully watched and any unusual form submitted to counsel for approval.

The signature of the transferor should appear on the assignment exactly as it reads on the face of the stock certificate, and should be witnessed and bear a date subsequent to the date of the stock certificate. Lack of a date and witness would not necessarily invalidate an assignment, although both are desirable as evidence of the proper execution of the assignment.

The name and address of the transferee should be entered in the assignment after the words "transfer unto." Most transfer agents insist that the Christian or given name of a stockholder appear on the face of the certificate and on the stock records, hence the transferee's name should be entered as "Henry I. Jay," or "H. Ivan Jay," and *not* as "H. I. Jay." In making a transfer to a married woman, her Christian name rather than her husband's name should be used, thus—"(Mrs.) Barbara Corlis Day," *not* "Mrs. Frank E. Day." It is not the custom in this country to add any titles to names appearing on stock certificates and, except for the designation "Miss" or "Mrs.," no prefixes or suffixes are used.

The primary question in passing upon the validity of an assignment is whether the signature thereto is in fact the signature of the registered owner of the shares to be transferred. It is apparent that a trust company cannot be familiar with the signatures of the thousands of constantly changing stockholders of the various corporations for which it acts as transfer agent. Consequently, some means of identification are required and it is important that the requirements as to identification, while giving every reasonable protection to the transfer agent and its principal, the corporation, shall not place unreasonable difficulties in the way of transfer of the stock.

Guarantee of signatures.—At present it is the general rule in New York City to require that the signature on assignments of stock be (1) guaranteed by a member of the New

York Stock Exchange, or (2) identified by a banking institution in New York City. Such guaranty or identification is usually endorsed directly below the transferor's signature on the back of the certificate or on the separate assignment as the case may be.

The acceptance of the guaranty of members of the New York Stock Exchange to the general exclusion of other brokerage firms is due to the fact that the Stock Exchange holds its members strictly responsible for their guaranty of signatures and, also, to the high value of membership on this exchange which indicates a generally high financial responsibility of its members.

The alternative requirement of identification by a banking institution is not always limited to New York banks, as New York transfer agents usually will accept the identification of other banking institutions of recognized standing, provided a specimen of the identifying signature has previously been filed with the transfer agent.

The transfer agent should maintain a file of specimen signatures of brokerage houses and bank officials which are acceptable to it. In order to keep this file up to date it is necessary for the transfer agent to be on the watch continually for changes in personnel of the various institutions and firms.

Until some years ago it was the practice to accept an acknowledgment before a notary public, plus, in the case of notaries of other states, a county clerk's certificate as to the due appointment of the notary. This practice has been discontinued by many transfer agents because of the feeling that they were entitled to the larger measure of protection afforded by the identification or guaranty of an institution or firm of recognized financial responsibility.

The proper identification of the signature to the assignment is, however, but one of many points involved in passing on a stock transfer. There are a number of questions which arise with respect to the assignor's capacity or authority. It is not our purpose to enter into a discussion of the legal phases of stock transfers which, of themselves, are sufficient to warrant a separate study.[9] But it may be helpful merely to draw

[9] The reader is referred to H. Brua Campbell's "Legal Aspects of the Transfer of Securities," and F. L. Maraspin and H. B. Driver's "Fundamental Principles of Stock Transfers."

attention to some of the difficulties which transfer agents must meet.

Classification of transfers.—Transfers may be placed in the following general classifications:

Individuals.
Tenants.
Partnerships.
Corporations.
Fiduciaries.[10]

Individuals and partnerships.—The simplest class of transfers is that of stock registered in the name of an individual or a partnership, where the assignment is made by the individual stockholder or a general partner of the partnership, as the case may be, such transfers requiring from the transfer agent's point of view, merely adequate assurance as to the genuineness of the signature of the transferor. A different situation exists when the assignment is made by an attorney pursuant to a power of attorney from the stockholder. In that case the transfer agent should carefully examine the attorney's authority from his principal, which should be of recent date. The original power of attorney, or a copy certified in a manner acceptable to the transfer agent, should be kept on file, and counsel should pass upon the question of whether the power is sufficiently broad or explicit to authorize the attorney to make the transfer.

Tenants.—The interests of two or more individuals in a single piece of property may be a *joint tenancy* or a *tenancy in common*. From the practical point of view of the transfer agent the chief distinction is that when a joint tenant dies his share in the property goes to the survivor or survivors; while, on the other hand, if one of the tenants in common dies, his interest in the property passes to his estate. In issuing a certificate of stock to two or more persons, a transfer agent should insist on having the character of the tenancy expressed in the certificate, for example, "Arthur B. Cliff and Donald E. Field as joint tenants and not as tenants in common." If a transfer agent is requested to transfer a certificate issued to

[10] F. L. Maraspin and H. B. Driver's "Fundamental Principles of Stock Transfers," p. 26. Mr. Campbell uses the same classifications.

tenants in common when one of the tenants has died, it should require an assignment by the remaining tenant or tenants and by the executor or administrator of the deceased, accompanied by papers such as we discuss under the heading of fiduciary transfers. On the other hand, "where a joint tenant has died, an endorsement by the survivors is sufficient."[11] The transfer agent should, however, receive proof of death of one of the joint tenants before accepting an assignment of the survivor or survivors.

Corporations.—The transfer of stock registered in the name of a corporation raises the question of the authority of its officers, who, by executing the assignment, have purported to act on its behalf. The careful transfer agent will always require evidence of this authority. The general authority of the officers of a corporation is set forth either in the by-laws of the corporation, or in the by-laws and resolutions of its board of directors. The latter is true when, as is often the case, the by-laws provide that the authority of the officers shall, subject to the regulations of the board of directors, be such as usually pertain to the respective offices. Unless, however, the authority, as stated in the by-laws or general resolution, includes the right to execute assignments of stock on behalf of the corporation, a specific resolution authorizing the particular assignment in question should be required. As a consequence, in transferring stock registered in the name of a corporation, the transfer agent should require:

1. Copy, certified by the secretary or an assistant secretary of the transferor under its corporate seal, of *(a)* its by-laws, *(b)* its general resolution of authority, or *(c)* a specific resolution, or, perhaps, the by-laws and a resolution, as the facts of the case may warrant.

2. A certificate, similarly executed, as to the election of the officers executing the assignment.

Fiduciaries.—Included in this classification are executors, administrators, guardians, and trustees. Transfers of stock coming under this classification are the most complicated with which the transfer agent deals. To give an idea of the variety

[11] H. Brua Campbell's "Legal Aspects of the Transfer of Securities," p. 25.

of questions involved we reprint below the requirements of one New York transfer office with respect to transfers by executors or administrators, of stock registered in the name of a decedent. This applies, also, to transfers of registered bonds discussed in the next chapter.

BANKERS TRUST COMPANY

NEW YORK

Requirements for the transfer by Executors or Administrators of stocks or bonds registered in the name of a decedent.

1. Copy of will, if any, duly certified by probate or surrogate official.
2. Officially certified copy of decree of appointment of executor or administrator, or, if such decree is older than six months, then probate certificate of recent date showing such appointment to be still in force.
3. Waiver and consent of the New York State Tax Commission, required by New York Inheritance Tax Law, which may be obtained upon application to the New York State Tax Commission at Albany, N. Y.
4. In the case of stock, evidence of the payment of the Inheritance Tax or waivers and consents from state officials as to all States imposing an inheritance tax or requiring such waiver or consent in respect to the securities sought to be transferred. Application for such waiver and consent should be made to the Attorney General of such State at the State Capitol.
5. In the case of a foreign decedent, a Federal waiver is required unless American ancillary letters have been issued. Application for it should be made to the Commissioner of Internal Revenue, Washington, D. C.
6. Evidence of payment of Stock Transfer Taxes (Federal or State), rate of 2 cents per $100 face value for New York State Stock Transfer Tax and at the rate of 2 cents per $100 face value for the Federal Stamp Tax (and 2 cents additional for the Pennsylvania tax in the case of stock of Pennsylvania corporations), unless stock is to be put into the name of the executor "as executor" or administrator, "as administrator."
7. Stock certificates or bonds properly assigned by the executors or administrators, as such. Signatures to the assignment should be witnessed and should be guaranteed by a bank having a New York correspondent or by a New York stock exchange house. Names and addresses of the transferees should be filled in after the words "transfer unto" on the back of the certificate. The space preceding the word "attorney" should be left blank.
8. If the transfer is to a person other than the executor or administrator, then
   (a) If the transfer is to a legatee there must be submitted an affidavit signed by the executor stating (1) that the laws of the State appointing the executor have been complied with as to giving notice to creditors, and (2) that all claims against the estate and all administration expenses and prior legacies have been paid, or that there are other assets sufficient to pay outstanding claims and unpaid administration expenses and prior legacies (excepting that in some States a distribution may not lawfully be made within a certain period, and further excepting that in some States a distribution may be made only under order of Court).

(b) If the transfer is to a person other than a legatee a certified copy of a court order must be furnished authorizing the sale of the stock or bonds unless the will expressly gives the executor power of sale, or unless the law of the State wherein the executor or administrator was appointed permits him to sell without a court order.

9. A transfer by an executor or administrator to himself individually will be recognized only:

(a) In the case of an executor—(1) if such transfer is specifically authorized by a court order a certified copy thereof must be furnished, or (2) if it appear from the will that he is the sole legatee, or a residuary legatee, or a legatee of the specific security sought to be transferred, or that the transfer is with the consent of all those at interest, but in case of "(2)" there must be furnished in addition, an affidavit signed by the executor stating (1) that the laws of the State appointing the executor have been complied with as to giving notice to creditors, and (2) that all legacies, claims against the decedent and his estate, and administration expenses have been paid or have been adequately provided for:

(b) In the case of an administrator—only if such transfer is specifically authorized by a court order. A certified copy thereof must be furnished.

Dated, ——

Note. The above requirements are subject to change.

Transfers by guardians, and testamentary trustees present their own peculiar difficulties, each involving, in addition to other transfer requirements, the production of a court appointment of the fiduciary. Transfers by individual or corporate trustees acting under deeds of trust or other agreements usually are simpler, depending upon the terms of the trust instrument, which the transfer agent must always study before attempting to pass upon any transfer.

In transferring stock to fiduciaries the transfer agent should be careful to have the character of the fiduciary relationship expressed on the stock certificate; for example, "National Trust Company and William Calvin as Executors of the last will and testament of Theodore Warren, deceased," or "John Strong as Trustee for Percival Little under deed of trust dated June 6, 1925."

In the case of all transfers requiring documentary evidence in addition to the mere assignment of the securities it is good policy to submit all of the papers to counsel, for approval, before making the transfer.

Taxes on transfers.—Under the Federal Revenue Act of 1926 every transfer of stock is subject to a stamp tax of 2

cents on each $100 of par value or fraction thereof, or on each share without par value.[12]

The State of New York and other states, including Massachusetts and Pennsylvania, also impose stock transfer taxes. The transfer agent must keep currently informed on the subject of existing laws, both Federal and State, imposing such taxes, and regarding the regulations and rulings of the Bureau of Internal Revenue and the state tax authorities.[13]

---

[12] Federal stamp tax. The following is a quotation from the Federal Revenue Act of 1926, Section 807, Schedule A, Part 3, which imposes the existing tax on transfers of shares of stock: "Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share: *Provided,* That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned: *Provided further,* That the tax shall not be imposed upon deliveries or transfers to a broker for sale nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That in case of sale where the evidence of transfer is shown only by the books of the corporation the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale, or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both."

[13] Among the authoritative services on Federal and New York State transfer taxes are those of Prentice-Hall, Inc., and The Corporation Trust Company.

Estate and inheritance taxes.—Under the Federal Revenue Act of 1926 and the appurtenant regulations of the Bureau of Internal Revenue, and under the inheritance tax laws now imposed by some of the states, the transfer agent is required, under penalty, to prevent the transfer of stock from the name of a decedent in the absence of evidence in required form of the payment of such taxes, or a waiver from the proper taxing authority. The laws and regulations[14] relating to these taxes are constantly changing. Again, in this case, the transfer agent for its own protection should subscribe to a service which will keep it currently informed on the subject.

Co-transfer agencies.—Many corporations maintain agencies for the transfer of their stock in more than one place. This is done for the convenience of the stockholders, to stimulate the market for the stock and sometimes to meet the requirement of stock exchanges. The New York Stock Exchange and other stock exchanges require that a transfer office be maintained in their city for all stock which they list. The New York Stock Exchange also requires that the certificates issued by transfer agents in different cities be interchangeable, that is, transferable at any transfer office of the company irrespective of the office of issue.

There are two distinct methods of handling co-transfer offices. One method provides that a certificate is transferable only at the office from which it was issued. As stated above, this method is not acceptable to the New York Stock Exchange, and it does not offer to the stockholders the full convenience of the second method. On the other hand, it is simpler and more economical to operate. This plan requires each transfer office to keep records only of the certificates issued from its office, and provides for the transfer of shares from one transfer office to another, at the option of stockholders, but only upon surrender of the certificates representing the shares to be transferred, to the office of issue, against the issuance of a transfer warrant directed to the transfer agent in the city to which the shares are to be transferred.

---

[14] Prentice-Hall, Inc., and The Corporation Trust Company issue services relating to the Federal Estate Tax and the various state inheritance taxes.

The latter, upon surrender of the warrant, will issue its own certificates representing the stock transferred.

The second (or interchangeable) method, which is much more satisfactory to the stockholder, is required by certain stock exchanges and is rapidly displacing the other system. Under the interchangeable system each stock certificate bears an endorsement to the effect that it may be transferred at any transfer office of the company. The several transfer offices exchange daily reports of all transfers. It is much the better practice for each office to maintain complete stock ledgers covering all of the outstanding stock of the company. Where this is not done, and each agent's ledgers record only the stock certificates issued at its office, it is necessary to refer to the daily transfer reports when transferring certificates issued by another agent. Each transfer agent will require evidence of the due appointment of the other transfer agents, and evidence of the authority of the persons who will sign on behalf of such transfer agents, with properly verified specimen signatures.

Some states require that all companies incorporated under their laws, or, perhaps, even those registered to do business therein, shall keep at their principal office within such state a complete record of stockholders. If the stock of a corporation subject to such requirements is transferable in another state, the transfer agent will be required to report all transfers to the office in which a stockholders record must be kept to comply with the statutory requirements.

Records.—The records required in a transfer department, while simple in principle, involve much detail. Forms 49, 49-A, and 49-B illustrate counter tickets issued against the

Form 849

BLANK C 4792

THIS RECEIPT MUST BE RETURNED FILLED IN AND SIGNED BEFORE STOCK WILL BE DELIVERED

C 4792 New York, ——— 19

Received from BANKERS TRUST COMPANY Transfer Agent

Certificate for ——— shares of Stock

per ———

STOCK WILL NOT BE READY FOR DELIVERY UNTIL 1.30 P. M.

Form 49.—Counter Ticket (General).

receipt of stock for transfer. The use of similar counter tickets has heretofore been described under reorganization department records (page 220).

TIN COMMON

C .7210

THIS RECEIPT MUST BE RETURNED FILLED IN AND SIGNED BEFORE STOCK WILL BE DELIVERED

C 7210 *New York,* 19

Received *from* BANKERS TRUST COMPANY *Transfer Agent*

Certificate for shares *of* Common Stock

AMERICAN TIN COMPANY

per

TIN COMMON

STOCK WILL NOT BE READY FOR DELIVERY UNTIL 1.30 P. M.

Form 49A.—Counter Ticket (Special).

No. 12024

Received from

Transferred to

ADDITIONAL PAPERS REQUIRED

STOCK WITH PAPERS HELD FOR APPROVAL OF COUNSEL.

No. 12024

BANKERS TRUST COMPANY
16 WALL STREET
NEW YORK

TRANSFER DEPT. 19

Received from

Certificate for shares of stock

of Company,

together with certain papers tendered to effect transfer of same and held pending approval of Counsel.

Stock delivered only on surrender of this memorandum.

F 456

Form 49B.—Temporary Counter Ticket.

Transfer record.—The transfer record (Form 50) is prepared with as many copies as required. If, for example, a certain stock is transferable in three cities, on an interchangeable basis, and, in addition, the principal office of the company required a daily report, an original and three carbon copies of the transfer record would have to be prepared by each transfer office. When more than one carbon copy is required these sheets can best be prepared in typing machines adapted for this purpose. Form 50 is the actual transfer sheet and constitutes the transfer agent's original record. Form 50-A is the daily report of transfers to one of the co-transfer agents, and Forms 50-B and 50-C (which are not illustrated, being similar to 50-A) are daily reports to the other co-transfer agent and the company, respectively. Form

Form 666 500 Sets-5-25

NEW YORK
COMMON STOCK
OF THE
PITTSBURGH COKE COMPANY

BY VIRTUE OF THE BILL OF SALE AND POWER OF ATTORNEY TO TRANSFER ENDORSED UPON EACH CERTIFICATE (OR ATTACHED THERETO) THE SHARES OF THE COMMON STOCK OF THE PITTSBURGH COKE COMPANY, REPRESENTED BY CERTIFICATES DESCRIBED ON THIS PAGE, ARE HEREBY TRANSFERRED BY THE UNDERSIGNED ATTORNEY, AS HEREON SET FORTH.

Date

	Closed %	Receipt Number	Transferor's Name	Posted	Certificate Numbers Surrendered	Shares			New %	Transferee's Name	Transferee's Address	Posted	N. Y. Certificates Issued	
						New York	Phila.	Pittsburgh					Number	Shares

Form 50.—Transfer Record.

NEW YORK

The Union Trust Company of Pittsburgh,
PITTSBURGH, PA.

We have this day transferred as indicated below, New York, Philadelphia and Pittsburgh Certificates of COMMON STOCK of PITTSBURGH COKE COMPANY.
BANKERS TRUST COMPANY,
Transfer Agent in New York
By _____
for Asst. Secretary.

Date

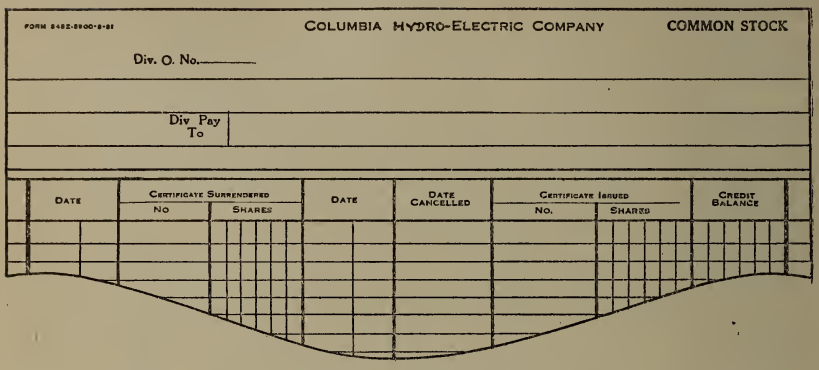
	Closed %	Receipt Number	Transferor's Name	Posted	Certificate Numbers Surrendered	Shares			New %	Transferee's Name	Transferee's Address	Posted	N. Y. Certificates Issued	
						New York	Phila.	Pittsburgh					Number	Shares

Form 50A.—Report of Transfers.

50, the original record, is signed by the attorney making the transfers, who, as explained earlier in this chapter, is an employee of the transfer agent. In many cases reports to the company or co-transfer agents are not required; in that event, the carbon copies may be dispensed with and the columns headed for shares received for transfer but issued by other transfer agents may be eliminated.

Each certificate accepted for transfer is entered on this record, followed by the names and addresses of the transferees, the number of shares to be transferred to each, and the other data indicated by the column headings. The certificates to be transferred are then passed to clerks who prepare the new certificates from the assignments. The new certificates are thereupon delivered to the clerks in charge of the transfer records, who check them back to entries on the record and enter the serial numbers of the new certificates, which are then ready for signature by an officer of the transfer agent. In trust companies where the volume of transfers is not too heavy, the officer in charge of the transfer department will require that the new certificates, when presented for signature, be accompanied by the corresponding old certificates, and he personally will check the total number of shares represented by the old and the new certificates, and, if they balance, will sign the new and cancel the old. In the larger transfer offices auditors are assigned to the department to audit the issuance of new certificates and the cancellation of the corresponding old certificates. These auditors, however, should not be permitted to take any part in the actual work of the department, as an independent check on the issuance of stock is essential. The auditors also check the certificate numbers of the new certificates to see that such certificates have been issued in consecutive order. If any have been spoiled through errors in preparation it is required that they be marked "void" and the signatures canceled by perforation.

Stock ledgers.—For each company whose stock is transferred (and for each class of stock if there is more than one) there should be a set of stock ledgers, preferably in loose-leaf form (Form 51), with a separate account for each registered stockholder. Each account should show the name and address of the stockholder, dividend instructions filed by the stock-


FORM 8482-8900-8-81 COLUMBIA HYDRO-ELECTRIC COMPANY COMMON STOCK

Div. O. No.

Div Pay To

Date	Certificate Surrendered		Date	Date Cancelled	Certificate Issued		Credit Balance
	No	Shares			No.	Shares	

Form 51.—Stock Ledger.

holder, if any, the date of issue or cancellation, the serial number and number of shares represented by each stock certificate issued in the name of such stockholder or transferred by him, and the balance of shares remaining in the account.

Normally the transfer record referred to above is delivered to the bookkeepers on the morning following the date of transfer, and the bookkeepers are required to complete the posting to the ledgers by noon, so that any discrepancy between the transfer record and the stock ledger may be reported and verified before it is necessary to deliver the new certificates. The practice in New York City is to deliver new certificates at and after 1:30 o'clock on the next business day after the transfer is presented (Saturdays excepted).

Stock ledger trial balances.—It is important that frequent trial balances be taken of the stock ledgers to be certain that the aggregate of the balances in the accounts reconciles with the total number of shares authorized to be outstanding. The stock ledgers constitute the record from which dividends are paid and stockholders' lists for meetings and other purposes are prepared; consequently, the ledgers must be kept in condition to supply accurate stockholders' lists on short notice. In the case of a company whose stock is active and its shareholders numerous,[15] the work of striking a trial balance is simplified by breaking the total figure into a number of sub-

[15] For example, the American Telephone & Telegraph Company on July 28, 1926, reported 380,683 stockholders of record.

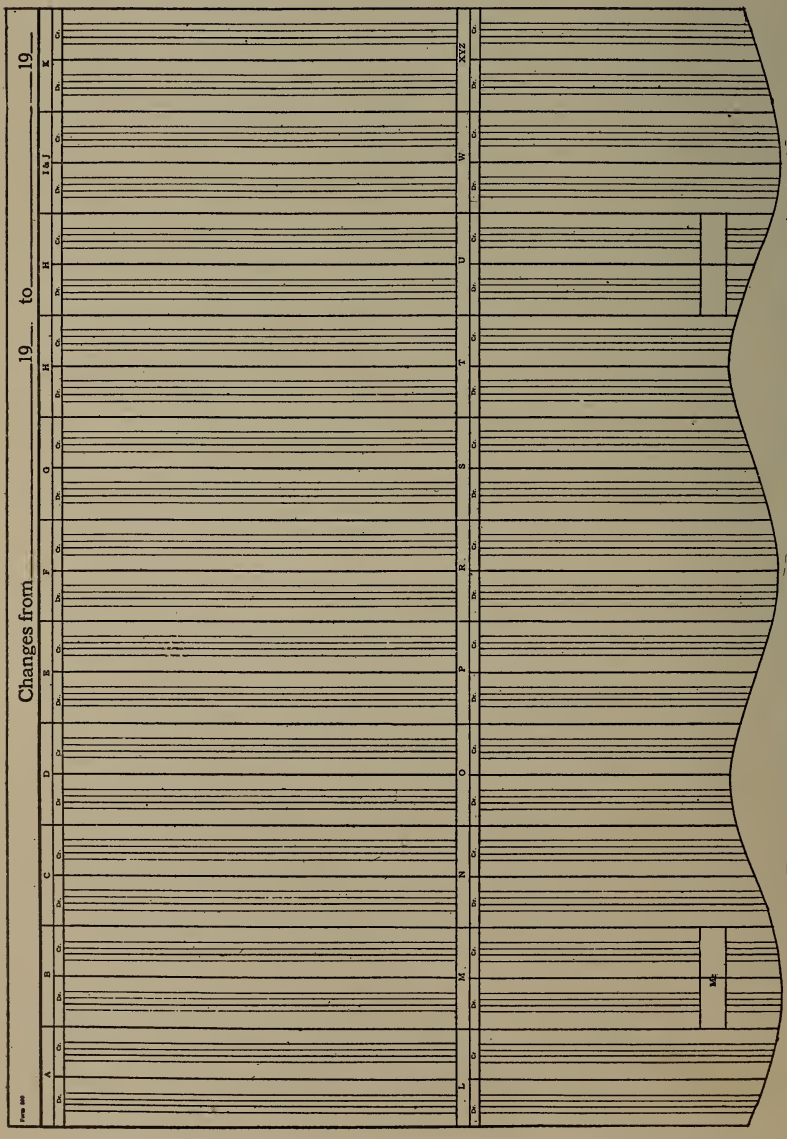
NAME OF COMPANY				CLASS OF STOCK	
DATE	DATE	DATE	DATE	DATE	DATE
A	A	A	A	A	A
B	B	B	B	B	B
C	C	C	C	C	C
D	D	D	D	D	D
E	E	E	E	E	E
F	F	F	F	F	F
G	G	G	G	G	G
H	H	H	H	H	H
I & J	I & J	I & J	I & J	I & J	I & J
K	K	K	K	K	K
L	L	L	L	L	L
M	M	M	M	M	M
N	N	N	N	N	N
O	O	O	O	O	O
P & Q	P & Q	P & Q	P & Q	P & Q	P & Q
R	R	R	R	R	R
S	S	S	S	S	S
T	T	T	T	T	T
U & V	U & V	U & V	U & V	U & V	U & V
W	W	W	W	W	W
X, Y & Z	X, Y & Z	X, Y & Z	X, Y & Z	X, Y & Z	X, Y & Z
TOTAL	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL
BOOK-KEEPER	BOOK-KEEPER	BOOK-KEEPER	BOOK-KEEPER	BOOK-KEEPER	BOOK-KEEPER
PROVED BY	PROVED BY	PROVED BY	PROVED BY	PROVED BY	PROVED BY
CHANGE SHEETS	CHANGE SHEETS	CHANGE SHEETS	CHANGE SHEETS	CHANGE SHEETS	CHANGE SHEETS

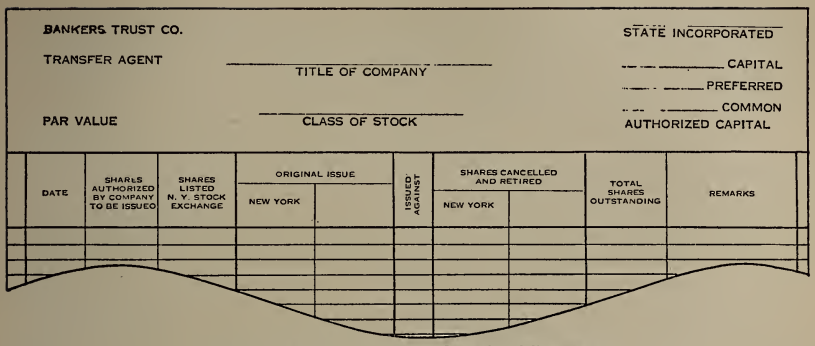
Form 52.—Stock Ledger Trial Balance.

totals corresponding to the divisions of the ledger, as illustrated in Forms 52 and 53. Form 52 is the trial balance sheet on which the total of each ledger is entered and footed to prove with the total number of shares outstanding. Form 53 is a record of changes between ledgers; it is posted from the transfer sheets and, if the trial as taken on Form 52 does not balance with the total amount of shares outstanding, the net change on each ledger as indicated by Form 53 is applied to the last previous trial balance, and so the difference is localized in one or a few of the ledgers, thus obviating the necessity of checking back all changes since the last successful trial balance.

Record of original issues.—It is obvious that a transfer agent should keep a record of the number of shares originally issued and of all subsequent issues. Form 54, which may be kept as the first sheet of the stock ledger, is designed for this

purpose. In the illustration used columns are provided for one co-transfer agent. The "Remarks" column is ordinarily used to record the date of the resolution of the corporation's stockholders or directors (or both) authorizing the issue or the retirement of stock.




BANKERS TRUST CO.

STATE INCORPORATED

TRANSFER AGENT

TITLE OF COMPANY

CAPITAL

PREFERRED

COMMON

PAR VALUE

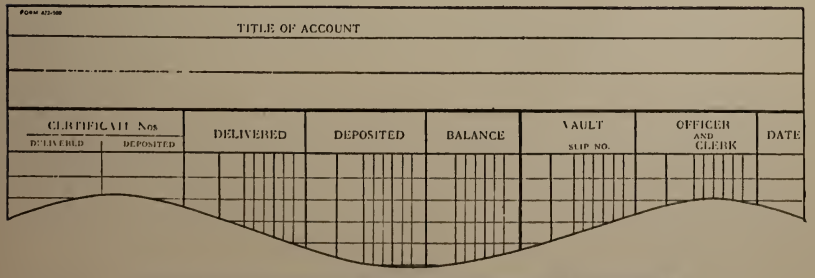
CLASS OF STOCK

AUTHORIZED CAPITAL

DATE	SHARES AUTHORIZED BY COMPANY TO BE ISSUED	SHARES LISTED N. Y. STOCK EXCHANGE	ORIGINAL ISSUE		ISSUED AGAINST	SHARES CANCELLED AND RETIRED		TOTAL SHARES OUTSTANDING	REMARKS
			NEW YORK			NEW YORK			

Form 54.—Record of Original Issues.

Control of unissued stock certificates.—The practice of placing with a transfer agent a supply of stock certificates, signed in blank, has already been mentioned. To give these certificates the protection which they should receive makes it necessary to place them under control, and to this end one trust company in New York sets aside a special safe in which unissued stock certificates are stored. This safe is subject to the regulations of the main vault, and deposits or withdrawals of stock certificates are made only on the authority of vault tickets approved by an officer of the transfer department.[16] A limited supply of certificates is kept on hand in the transfer department to take care of current needs, and this supply is replenished by vault withdrawals daily, or as frequently as required. Form 55 illustrates the record used


TITLE OF ACCOUNT

CERTIFICATE Nos.		DELIVERED	DEPOSITED	BALANCE	VAULT SLIP NO.	OFFICER AND CLERK	DATE
DELIVERED	DEPOSITED						

Form 55.—Control Sheet—Unissued Certificates.

for unissued stock certificates. Each such certificate, for purposes of control, is treated as one unit. The audit department receives, each day, all vault deposit and withdrawal

[16] For an explanation of the use of vault tickets, see pages 47 et seq.

tickets. As the auditors assigned to the transfer department also examine all issues of stock to see that the certificates have been used in numerical order, it is possible for the audit department to keep a continuing check on the stock certificates.

Stockholders' right to inspect records.—One of the most difficult questions a transfer agent has to face is the frequent request of stockholders for permission to inspect the stock records. In the case of a stockholder desiring information which he believes will assist him in protecting his position as a stockholder, the request is both reasonable and proper. Unfortunately, however, stockholders' lists have come to have a commercial value and sometimes such requests are for purposes foreign to the best interests of the corporation and its stockholders as a whole. The laws of the various states differ widely on the subject and the transfer officer should in all such situations secure the advice of counsel, and confer with the issuing corporation before action is taken.[17]

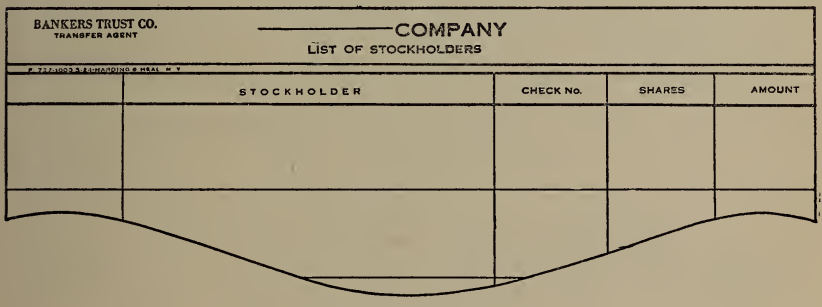
Closing of transfer books.—Many corporations during a short period prior to the payment of dividends, or the holding of a stockholders' meeting, "close" their transfer books; that is, they refuse to make transfers of stock for a specified period. In some states the statutes expressly give the right to close transfer books. In states where this is not a statutory right, authority is usually included in the charter or by-laws of the company. The purpose, obviously, is to give to the corporation an opportunity to prepare a list of stockholders for use at the stockholders' meeting or in paying a dividend. The custom of closing transfer books is, however, giving way to a considerable extent to the practice of declaring dividends payable on a specified date to stockholders of record on an earlier so-called "record" date, but *without* closing the books. The latter practice is a convenience and sometimes a decided advantage to stockholders; consequently, it is generally favored.

Annual and special stockholders' meetings.—The transfer agent will be required to prepare and certify a list of stockholders for use at each stockholders' meeting. The charter

[17] In New York the right of stockholders in this respect is set forth in Section 22 of Chapter 61 of the Laws of 1909, as amended in 1916.

or by-laws of the company will specify that stockholders of record at the date of closing the books, or a certain number of days prior to any such meeting, are entitled to vote thereat. Whether or not the transfer books close, the list will be prepared as of the date so specified.

Dividends.—In the case of a dividend declaration the transfer agent will also prepare and certify a list of stockholders of record on the specified date (the "record date" just men-


BANKERS TRUST CO.
TRANSFER AGENT

———————COMPANY
LIST OF STOCKHOLDERS

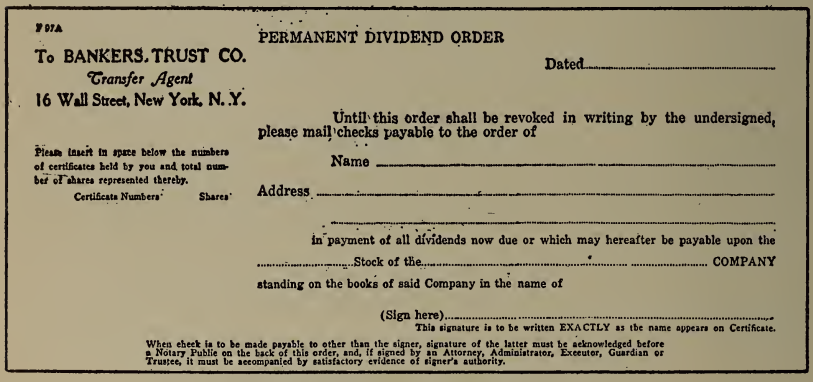
	STOCKHOLDER	CHECK No.	SHARES	AMOUNT

Form 56.—Stockholders' List.

tioned) and from this list the dividend will be paid. Form 56 is used for preparing certified stockholders' lists; the columns headed "Check No." and "Amount" are used only in connection with dividend payments. It will be noted that the form is ruled for use of stencils, which, in transfer work, where the volume is at all heavy, are almost indispensable. These stencils are of the type illustrated in Chapter IV, page 63, except that each one bears the name and address of a stockholder.

Dividend orders.—In the absence of instructions to the contrary, dividends are paid to the registered stockholders as their names and addresses appear on the stock records. A stockholder, however, has the right to give other instructions as to the disposition of dividends on stock registered in his name. Such instructions are termed "dividend orders," and most transfer offices require the use of a standard form such as that illustrated in Form 57. Dividend orders, as received must be carefully noted on the proper account in the stock ledger (as indicated on Form 51, page 256), and noted on the stockholders' lists prepared for dividend payments. When the

stencil system is used, the dividend orders are noted directly on the stencil and so automatically appear on the dividend lists. If the stencil system is *not* used, Form 56 (page 261) should have an additional column, to the right, headed, "Dividend Instructions," in which all such orders will be noted on each list prepared for use in the payment of dividends.



F 97A

PERMANENT DIVIDEND ORDER

To BANKERS TRUST CO.
Transfer Agent
16 Wall Street, New York, N. Y.

Dated.....

Until this order shall be revoked in writing by the undersigned, please mail checks payable to the order of

Name .....

Address .....

.....

in payment of all dividends now due or which may hereafter be payable upon the .....Stock of the..... COMPANY standing on the books of said Company in the name of

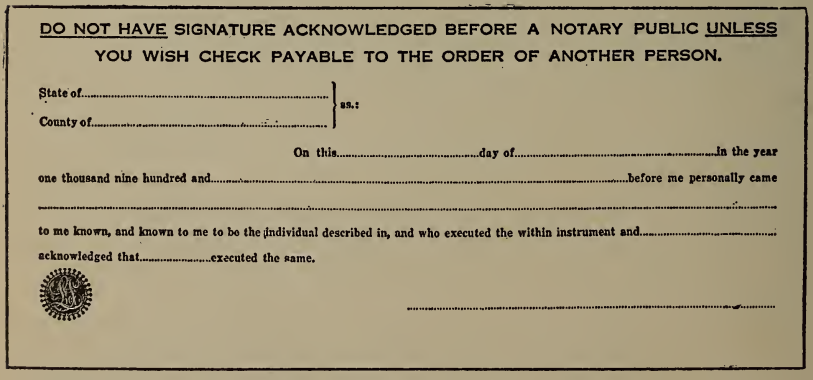
(Sign here).....
This signature is to be written EXACTLY as the name appears on Certificate.

Please insert in space below the numbers of certificates held by you and total number of shares represented thereby.

Certificate Numbers | Shares

When check is to be made payable to other than the signer, signature of the latter must be acknowledged before a Notary Public on the back of this order, and, if signed by an Attorney, Administrator, Executor, Guardian or Trustee, it must be accompanied by satisfactory evidence of signer's authority.

Form 57.—Dividend Order (Front).



DO NOT HAVE SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC UNLESS YOU WISH CHECK PAYABLE TO THE ORDER OF ANOTHER PERSON.

State of.....
County of..... } ss.:

On this.....day of.....in the year one thousand nine hundred and.....before me personally came .....

to me known, and known to me to be the individual described in, and who executed the within instrument and..... acknowledged that.....executed the same.

.....

Form 57.—Dividend Order (Back).

Dividend disbursing agent.—Many corporations desire to be relieved entirely of the responsibility and detail involved in the payment of dividends, and so, by proper resolution, will appoint its transfer agent as dividend disbursing agent. If a corporation does not disburse its own dividends the transfer agent, having all the required records, is the logical appointee. Form 58 illustrates a resolution in form required by a trust company in New York to cover such appointments.

Form 58.—Resolution Appointing Dividend Disbursing Agent.

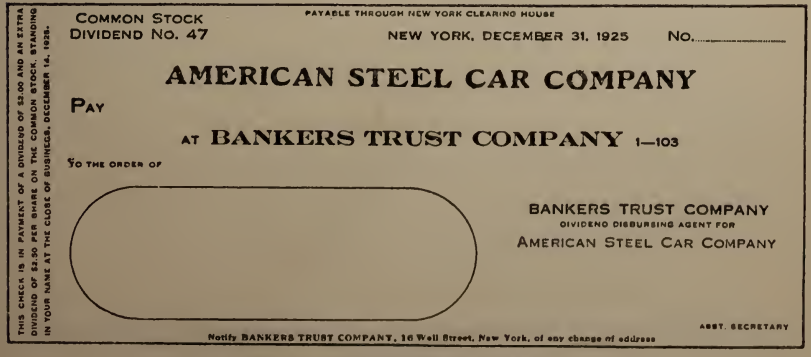
RESOLUTION
of the
BOARD OF DIRECTORS
of

RESOLVED that Bankers Trust Company, Transfer Agent of this Company, be and it hereby is appointed Dividend Disbursing Agent for the Capital Stock of this Company, and it hereby is authorized and directed to pay such dividends as may be declared by the Board of Directors of this Company upon the Company's lodging with said Bankers Trust Company certified copies of the resolution of the Board of Directors declaring such dividends and depositing with said Bankers Trust Company an amount sufficient for the payment of such dividends at least two days before each dividend date.

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted at a regularly called meeting of the Board of Directors of —— held at the office of —— on the —— day of —— 19—, at which meeting a quorum was present.

WITNESS my hand and the seal of the Company this —— day of —— 19—.

If acting as dividend disbursing agent, the transfer agent, upon receipt of due notice of the declaration of a dividend will prepare a certified list of stockholders as of the record date, exactly as though it were not dividend disbursing agent. Such notice should state the number of the dividend, the class of stock upon which it is payable, the rate per share, the date on which it is payable, and the date as of which stockholders of record are entitled to the dividend. In addition, the dividend disbursing agent will prepare checks, as illustrated by Form 59, over its signature as agent for the company. It will be noted that the check is prepared for the use of stencils and "window" envelopes, thus saving a considerable amount



Form 59.—Dividend Check.

of clerical work. The checks, of course, should not be mailed until the dividend agent has received, from its principal, funds to cover the total amount of its dividend checks. Provided funds are in hand it is customary for dividend checks to be

Company_____

Stock_____ Div. No._____

Name _____

_____

_____

Check No._____ Amount_____

Payable_____ No. of Shares_____

Has check been returned_____

Has check been paid_____

Check remailed _____

Duplicate check mailed_____

Change of address made_____

1041----Auditor---SP----Ind. 901---Release

Date _____

Bank _____

Form 60.—Lost Dividend Check Search Sheet.

mailed on the afternoon next preceding the day on which the dividend is payable.

Lost dividend checks.—Through carelessness on the part of the recipient, miscarriage in the mails, or errors caused by the dividend agent, dividend checks are sometimes lost. In such cases, on receipt of notice from a stockholder that his dividend check has not been received or has been lost, the dividend agent will first examine the paid checks of the dividend in question to determine that the check has not been cashed, using for this purpose a blank such as Form 60. If the examination discloses that the check has not been cashed, an "indemnity letter" as suggested by Form 61 will be sent to the stockholder for signature and upon receipt of the letter

Form 61.—Indemnity Letter.

———————— 19—

To BANKERS TRUST COMPANY,
Dividend Disbursing Agent,

Dear Sirs:—

I hereby request that you issue to me a duplicate of original dividend check of ———— Company, dated ——, No. ——, for $——, being dividend No. —— to which I am entitled as owner of —— shares of the —— stock of —— Company; in consideration therefor I agree, for myself, my heirs, executors, and assigns, to indemnify and save you harmless at any and all times thereafter from actions, proceedings, claims and demands which may be made or brought against you in respect of such original check on your issuing to me such duplicate check. I agree to deliver or cause to be delivered to you such original check now lost or destroyed for cancellation and destruction if the same shall be found, and to reimburse you for all expenses incurred by you by reason of the issue of such duplicate check.

Very truly yours,
(Sign here) ————————————

STATE OF
COUNTY OF } ss.

——, being duly sworn deposes and says that affiant was, on the first day of —— 19—, the owner of —— shares of the —— stock of —— Company, and as such was entitled to the dividend accruing on such stock on that date.

Affiant further says that any dividend check issued to affiant by Bankers Trust Company as Agent for said Company for the above mentioned dividend, is to affiant's best knowledge and belief, lost or destroyed and that affiant has not at any time endorsed, transferred or otherwise negotiated any such check, but that affiant believes that if the same was sent by the Company it has been lost or destroyed. This affidavit is made to induce Bankers Trust Company to issue a duplicate check in lieu of said check so lost.

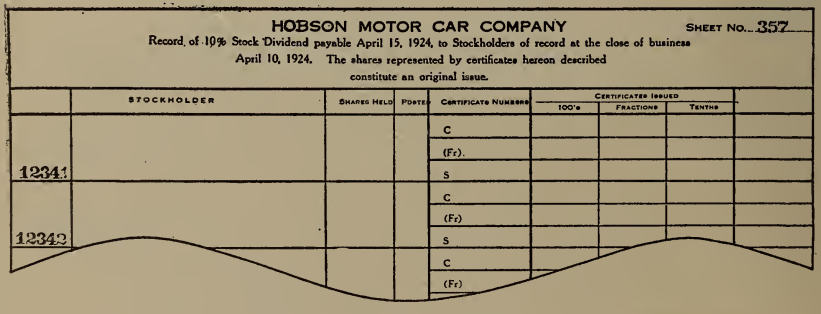
(Sign here) ————————

Subscribed and sworn to before me this —— day of ——, 19—.

NOTE.—The stockholder's signature to this request must be acknowledged by a Notary Public, and if acknowledged outside of the State of New York, a certification of the attesting officer's authority must be attached.

properly signed, a duplicate dividend check will be issued and mailed to the stockholder. As a precautionary measure, many transfer agents quite properly insist upon the elapse of a specified period, say 30 days, before issuing the duplicate check. It is surprising how many checks which are reported lost will turn up during such a period. On the other hand, if the examination reveals that the check has been returned by the post office because of incorrect or insufficient address, the check will be remailed to the stockholder and there will be enclosed with the check a form on which the stockholder will be requested to indicate the address to which he desires subsequent dividends mailed. This should be carefully noted on the stock records.

Stock dividends.—At times a corporation will distribute to its stockholders a dividend payable in its own stock, theretofore unissued, or perhaps in its own stock previously issued but held in its treasury, or even in the securities of another corporation.[18] Such a distribution payable in stock of the company itself is practically always handled by the transfer agent. The transfer agent should receive a certified copy of resolutions of the directors, declaring the dividend, fully setting forth the terms of the distribution, and directing the issuance of the new stock. Under some circumstances the transfer agent might require evidence of appropriate action by the corporation's stockholders, but this is a question to be decided by the transfer agent's counsel. For convenience in handling such a distribution the stockholders' list is prepared



HOBSON MOTOR CAR COMPANY SHEET NO. 357

Record of 10% Stock Dividend payable April 15, 1924, to Stockholders of record at the close of business April 10, 1924. The shares represented by certificates hereon described constitute an original issue.

	STOCKHOLDER	SHARES HELD	PORTF	CERTIFICATE NUMBERS	CERTIFICATES ISSUED 100's	FRACTIONS	TENTHS	
12341				C				
				(Fr)				
				S				
12342				C				
				(Fr)				
				S				
				C				
				(Fr)				

Form 62.—Stock Dividend Record.

[18] A distribution of this kind might be made either by the Reorganization or the Transfer Department.

on a form somewhat different from the form used for cash dividends or meetings. Form 62 (in three parts) illustrates a good type of stockholders' list for use in the distribution of a stock dividend. Form 62, the first sheet, is ordinarily used as a report to the principal office of the corporation; if there are co-transfer agents, additional copies may be made and used as reports to them. Form 62-A constitutes the original issue record of the transfer agent itself and postings to the

HOBSON MOTOR CAR COMPANY SHEET NO.

Combined Record of 10% Stock Dividend and Registered Mail Record.

Stock Dividend payable April 15, 1924, to Stockholders of record at the close of business April 10, 1924.

The shares represented by the certificates hereon described constitute an original issue.

Registry Numbers	Stockholder	Postal Receipt Returned	Shares Held	Posted	Certificate Numbers	Certificates Issued '100's	Certificates Issued Fractions	Certificates Issued Tenths	Date Letter of Acknowledgement Received
					C				
					(Fr)				
					S				
					C				
					(Fr)				
					S				

Shipment of ..... Pieces

Counted and Sealed		Delivered to Post Office by	
By	Witnessed By	Messenger	Special Officer

Called to

Figured By

Drawn By

Audited By

Examined By

Enclosed By

Form 62A.—Stock Dividend, Original Issue Record.

Page of Bill 35[illegible] Post Office at CITY HALL STATION, N. Y.

Received APRIL 14, 1924, from BANKERS TRUST CO., the following described pieces of registered mail (Letters) numbered from ..... to ....., inclusive, making a total of ..... (in words) pieces. ..... for Postmaster.

Registry Numbers	Name of Addressee Street and Post Office Address
12350	
12370	

Page of Bill 35[illegible], Total of ..... Registered Pieces on Bill.

Received from BANKERS TRUST CO., the above described Registered Pieces, numbered from ..... to ....., inclusive.

....., for Postmaster.

PUT NAME OF FILING OFFICE AND DATE OF RECEIPT

Form 62B.—Stock Dividend, Post Office Receipt.

stock ledgers are made direct from these sheets, a single summary entry referring to these sheets for details being made on the transfer record. The spaces at the foot of each sheet are used to record the departmental checking of the issue and mailing of the dividend. By arrangement with the post office (which is glad to enter into such an arrangement with any responsible transfer agent) Form 62-B is used as a post office registered mail transmittal sheet and receipt. In the case of a stock dividend involving thousands of separate shipments, the saving of detail to both the post office and the transfer agent is apparent, to say nothing of the elimination of the possibility of errors due to the likelihood of discrepancies between the three records if separately prepared.

Perhaps a word of explanation as to the headings of the columns covering the issue of the new certificates is advisable. In the parlance of "the Street" stock certificates are generally divided into two classes—"100's" and "fractions," namely, certificates for an even 100 shares and certificates for less than 100 shares, but *not* certificates for a fraction of a share, the latter being termed "scrip". If a stock is listed on the New York Stock Exchange, certificates for more than 100 shares are not a "good delivery," but, if such certificates are issued, they are treated, from the transfer agent's point of view, as fractions. Form 62 has been prepared to cover a stock dividend at the rate of 10 per cent. Consequently, in the case of each stockholder owning a number of shares not evenly divisible by 10, it was necessary to issue scrip to cover the odd number of tenths. In the column headed "Certificate Numbers" "C" indicates 100 share certificates, "Fr.", certificates for less than 100 shares, and "S", scrip certificates for from one tenth to nine tenths of a share. With this explanation the corresponding subheadings under "Certificates Issued" will be more easily understood.

Lost or destroyed stock certificates.— In regard to notices of the loss, theft, or destruction of stock certificates, and requests to stop transfer thereof and to issue duplicate certificates, the trust company as transfer agent confronts the same general problem as it does when acting as trustee in respect of lost, stolen, or destroyed bonds. The latter situation is

discussed in Chapter V, page 85. An important difference is that under the law of some States bonds and stocks are not on the same footing as regards their transferability. Here, again, is a strictly legal problem and one as to which the transfer agent should, for its own protection and that of its principal, rely only on competent legal advice. A further point to consider is that, in the case of bonds, the amount of obligation is fixed, and usually the market value is subject to comparatively little fluctuation, while in the case of stock there is no fixed obligation and the possibilities of market fluctuation, especially of common stock, are almost limitless. Consequently, the question of the amount of proper indemnity assumes greater importance and the margin of safety in the case of stock should be greater than is generally deemed necessary for bonds. A bond of indemnity given in connection with the issuance of a duplicate stock certificate should be executed in 3 counterparts, for the corporation, transfer agent and registrar respectively. Form 63 is well adapted for use in following through the necessary operations of a transfer department, on receipt of a "stop transfer" notice and its final withdrawal.

Destruction of canceled stock certificates.—Transfer agents are continually faced with the problem of disposing of the steadily increasing accumulation of canceled stock certificates. The question arises: What period must elapse before canceled certificates safely may be destroyed?

The primary purpose of keeping stock certificates is to protect the transfer agent against possible suits based on charges of forgeries of endorsements, guaranties, etc. Such suits would be difficult to defend in the absence of the certificates in question. The statute of limitations in this state [New York] on such an action is ten years from the date of the forgery. This period, however, would not necessarily apply in all cases, as the running of the statute may be suspended by reason of incompetency, infancy, absence from the state, and certain other events. Therefore, it cannot be said with certainty that such an action would be barred in ten years from the date of the forgery.

The forging of an endorsement on a stock certificate would, in most cases, imply a theft from, or loss by, an owner. It

IMPORTANT

Stop Transfer Record

Name _____

Company _____ Stock _____

Certificate No. _____ No. of Shares _____

Stop Acknowledged _____

S. T. Form Sent _____

Noted on Stop Board _____

" " Register _____

" Stock Ledger _____

" in Certificate Department _____

Registrar Advised _____ Date _____

Transfer Agent in _____ City _____

Stop Removed on Board _____

" " Register _____

" " Ledger _____

" " Ctf. Dept. _____

Advised Registrar _____

" Transfer Agent _____

Form 63.—Stop Transfer.

is the general experience of transfer departments that in such cases the owners lose little time in notifying them of the loss. It seems, therefore, that it would be rather improbable for the transfer agent not to receive notice or claim of forgery within ten years, or even within five years, after the forgery.

As a practical matter, then, the risk involved is very slight if the period provided by the statute of limitations has elapsed from the date of transfer. Earlier destruction of the certificates would mean that the transfer agent is willing to accept, as a practical business matter, whatever risk may be involved.

As stock certificates are not the property of the transfer agent they should be destroyed only on instructions, or at least with the written consent, of the issuing corporation. Some transfer agents are now solving the problem of canceled stock certificates by delivering them to the issuing corporations after a period of several years has elapsed.

General.—As explained in the preface, this book is written from the practical trust company point of view, and with no attempt to cover the many legal questions involved. In numerous places the reader is cautioned to seek the advice of counsel rather than to attempt, personally, to pass on questions of law.

Chapter XVIII

STOCK REGISTRATION, BOND REGISTRATION, AND COUPON PAYING DEPARTMENTS

Stock registration.— The appointment of an independent registrar is the almost invariable custom of companies whose stocks are publicly distributed. Such an appointment is a listing requirement of the New York Stock Exchange and many other exchanges.

As heretofore explained, the prime duty of a registrar of stock is to check the issuance and cancellation of stock certificates so as to guard against any overissue.

Appointment.—As a basis of its appointment as registrar of the capital stock of a corporation a trust company will require:

1. A certified copy of resolutions of the directors of the company appointing the trust company and defining its duties. Form 64 is the form of resolution used for this purpose by a trust company in New York.[1]

2. Papers in form similar to those described on page 233 et seq. (items 1, 2, 4 and 5) in regard to the appointment of a transfer agent.

Form 64.—Resolution Appointing Registrar (Stock Outstanding Prior to Appointment).

CERTIFIED COPY OF RESOLUTIONS
of the
BOARD OF DIRECTORS
of

On motion duly seconded, it was

RESOLVED:

FIRST: That Bankers Trust Company, of New York, N. Y., be and it is hereby appointed agent of this Company, with the title "Registrar", for the registration of certificates

—— for the —— capital stock of this Company, of which there are now outstanding —— shares of said preferred stock and —— shares of said common stock.

[1] This form is reprinted by permission of Bankers Trust Company, New York.

SECOND: That for the purpose of an additional original issue of certificates representing such stock, the Registrar is hereby directed:

To register and countersign as Registrar certificates for not exceeding

—— shares of such —— stock, of the par value of $—— each
—— shares of such —— stock, of the par value of $—— each
—— shares of such —— stock, of the par value of $—— each

when presented to it for that purpose and countersigned by the Transfer Agent, and signed by* the —— and the —— of this Company.

THIRD: That the Registrar be and it is hereby authorized and directed to register transfers from time to time of certificates for such capital stock, and of the certificates for —— shares of the preferred and —— shares of the common stock of this Company now outstanding, upon the cancellation of certificates for a like amount of stock of the same class, signed by the proper officers of this Company, and, as to certificates registered by said Registrar, countersigned by the Transfer Agent and the Registrar, and to register and countersign new certificates accordingly when they shall have been signed by the proper officers of this Company, and countersigned by the Transfer Agent; Provided, however, that the Registrar shall be under no duty whatever in connection with the names in which certificates are issued or the correctness of any transfer from one name to another.

FOURTH: That specimen signatures of the officers of this Company authorized to sign certificates of stock as aforesaid, and of the officers of the Transfer Agent authorized to sign for the Transfer Agent, and specimen stock certificates, be lodged forthwith with the Registrar, to be used by it for purposes of comparison; and that the Registrar shall be protected and held harmless in recognizing and acting upon any signature or certificate believed by it in good faith to be genuine. When any officer of this Company or of the Transfer Agent shall no longer be vested with authority to sign for this Company or for the Transfer Agent, as the case may be, written notice thereof shall immediately be given to the Registrar, and until receipt of such notice the Registrar shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by it in good faith to be such genuine signature.

FIFTH: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Company not inconsistent with its by-laws, to sign certificates of stock on behalf of this Company, and in like manner additional officers may be appointed to sign on behalf of the Transfer Agent, and in every such case certified copies of the resolutions effecting the appointments and specimen signature of such officers shall forthwith be lodged with the Registrar.

SIXTH: That when the Registrar deems it expedient, it may apply to ——, City of —— State of ——, counsel for this Company, or to its own counsel for instructions or advice, and for any action in accordance with such instructions or advice this Company will fully protect and hold the Registrar harmless from any and all liability.

SEVENTH: In the event that any such certificate shall become lost or destroyed, before any new certificate or certificates shall be registered in lieu thereof, a satisfactory bond shall be required in such amount as may be provided by the by-

* These resolutions should correspond to the provisions of the charter or certificate of incorporation, and by-laws.

laws of this Company, and in any event not less than the value of such certificate, wherein the Registrar shall be named as one of the obligees. The bond shall be in a form satisfactory to the Registrar.

EIGHTH: That the —— President and the —— Secretary of this Company be and they hereby are directed to certify a copy of these resolutions under the seal of this Company and to lodge such copy, together with certified specimen certificates of the stock of this Company in the forms duly adopted by it, copies of the charter or certificates of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of this Company, with the Registrar and to furnish to the Registrar certified copies of any amendments that may from time to time be made to the charter or certificate of incorporation or by-laws.

We, the undersigned, —— President and —— Secretary, respectively, of the —— (hereinafter called "Company"), do hereby certify that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of the —— Company, duly held at No. —— in the City of ——, State of ——, on the —— day of ——, 19—, at which a quorum was present and voted in favor of an adoption thereof.

We further certify that the annexed certificates are true and correct specimens of the certificates of the capital stock of the Company which have been duly adopted by the Company, that the annexed schedule or signature card or cards set forth the officers of the Company and of ——, Transfer Agent, authorized to sign such certificates, and that the signatures set opposite their respective names are specimens of the genuine signatures of such officers.

We further certify that the Company was duly organized under the laws of the State of ——, and that under the accompanying charter or certificate of incorporation and all amendments thereto, certified by the Secretary of State, the Company has authorized capital stock of $——, subdivided into

—— shares, of the par value of —— each, of —— stock,
—— shares, of the par value of —— each, of —— stock,
—— shares, of the par value of —— each, of —— stock,

WITNESS our hands and the seal of the Company this —— day of ——, 19—.

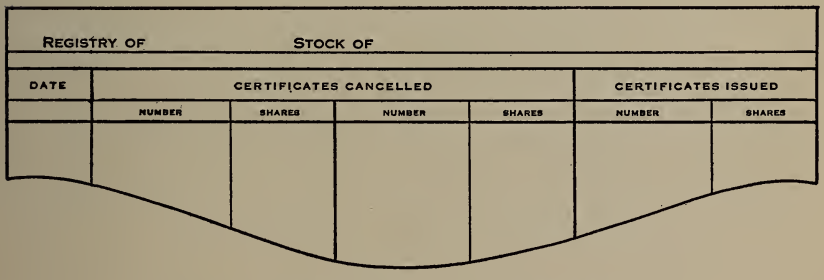
President.

(Corporate Seal) *Secretary.*

Relations with transfer agent.—In New York it is the custom of the transfer agents to deliver to the registrar, in the morning, the new certificates and the canceled certificates representing transfers effected during the preceding business day. The transfer agent will have canceled the signatures of officers of the corporation and the transfer agent, but *not* the signature of the registrar. The registrar is expected to register the stock, which includes: (1) the cancellation of its signature on the surrendered certificates; (2) the completion of the necessary entries on its records; and (3) the dating and signing, as registrar, of the new certificates, and to return

both the old and the new certificates to the transfer agent before 1 o'clock, so that, in accordance with custom, the transfer agent may make delivery of the new certificates at 1:30 o'clock on the next business day (Saturdays excepted) following that on which the stock was accepted for transfer.

Records.—The records of the registrar are simple. Forms 65 and 66 are typical "registration sheets." Form 65 is for use in the case of a stock which is transferred and registered in only one city, and Form 66 is for use in the case of stock which is transferred and registered in two or more cities on an interchangeable basis. The only substantial difference be-

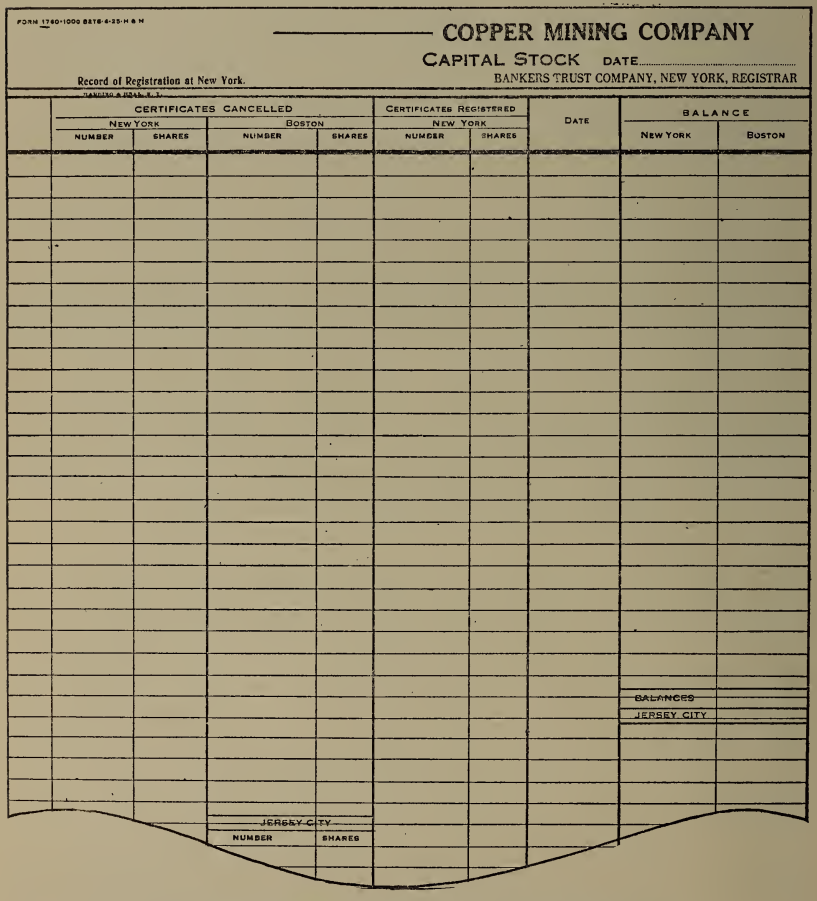


Form 65.—Registration Sheet (One Registrar).

tween the two forms is the subdivision of the cancellation columns into divisions for the cities in which the stock is transferable, and the inclusion of balance columns for each city, so that the registrar's records at any time will indicate the total number of shares issued from each city then outstanding. Form 66 is made up in as many copies as there are registrars and one carbon copy is mailed daily to each co-registrar.

These forms do not contain a column for "dating off" the canceled certificates. For many years it was the general practice of registrars to include on the registry sheet a column to the right of the "certificates issued" columns, headed "date of cancellation." Each day the registrar, before returning the canceled certificates to the transfer agent, would go back through its registration record and stamp the date of cancellation in this column, opposite the original entry of each certificate canceled. This practice, if accurately carried out,

is a very good check against the possibility of registering stock in place of fraudulent or altered certificates, and in theory, at least, makes it possible for the registrar to take off a list of certificates at any time outstanding. However, it has been found from experience that it is almost impossible to main-



FORM 1760-1000 BATE-4-25-H & M

_____ COPPER MINING COMPANY

CAPITAL STOCK DATE.....

Record of Registration at New York. BANKERS TRUST COMPANY, NEW YORK, REGISTRAR

	CERTIFICATES CANCELLED				CERTIFICATES REGISTERED		DATE	BALANCE	
	NEW YORK		BOSTON		NEW YORK			NEW YORK	BOSTON
	NUMBER	SHARES	NUMBER	SHARES	NUMBER	SHARES			
								BALANCES	
								JERSEY CITY	
			JERSEY CITY						
			NUMBER	SHARES					

Form 66.—Registration Sheet (Two Registrars).

tain the complete accuracy of such a record and an inaccurate record of this kind is worse than none at all, to say nothing of the detail work involved in its maintenance. As a consequence, this system has been discontinued by trust companies handling a considerable volume of registrations.

Original issues.—The registrar as well as the transfer agent should keep a careful record of all original issues of stock. Form 67 is almost identical with the similar form (No. 54) for use by transfer agents and described on page 259.

Signing and audit.—In the case of trust companies where the volume of registrations is light, the officer in charge of the registration department personally will count the number

BANKERS TRUST CO.

REGISTRAR

PAR VALUE

TITLE OF COMPANY

CLASS OF STOCK

STATE INCORPORATED

CAPITAL

PREFERRED

COMMON

AUTHORIZED CAPITAL

DATE	SHARES AUTHORIZED TO REGISTER		ORIGINAL ISSUE SHRS. REGISTERED		SHARES CANCELLED AND RETIRED		TOTAL SHRS. REGISTERED AND OUTSTANDING	REMARKS
	BY COMPANY	BY N. Y. STOCK EXCH.	NEW YORK		NEW YORK			

Form 67.—Record of Original Issue.

of shares represented by the old certificates and verify that total with the total shares represented by the new certificates. If the totals balance, he will cancel the registrar's signature on the old certificates, and sign the new ones on behalf of the registrar. In companies where the volume is too heavy for this practice, auditors independent of the staff of the department will be assigned to the department to make this verification.

Certificates of deposit, etc.—As explained on page 198, it is an increasing practice, and a requirement of the New York Stock Exchange,[2] to have a registrar appointed for certificates of deposit and voting trust certificates. The duties of the registrar under such an appointment are essentially the same as in the registration of stock certificates, except that its appointment comes from the protective or reorganization committee or voting trustees, and its dealings are with the

[2] See New York Stock Exchange requirements, pages 446 and 449.

depositary for the committee or the agent for the voting trustees instead of with a transfer agent.

Stop transfers and duplicate certificates.—Stop transfer notices usually are filed with the registrar by the transfer agent. While the prevention of the transfer of certificates against which "stops" have been filed is not a part of the duty of the registrar, it ordinarily will coöperate with the transfer agent to the extent of filing such information and endeavoring, without assuming responsibility, to call the transfer agent's attention to any certificate presented for cancellation against which a stop notice has been filed.

Duplicate certificates must, of course, be registered, and the registrar will sign a duplicate against a certificate claimed to have been lost, stolen, or destroyed only if it receives: (1) satisfactory documentary evidence of the authorization of the issue of the duplicate certificate by the corporation; (2) evidence of due compliance with the regulations of any stock exchange on which the stock may be listed; and (3) a counterpart of the bond of indemnity filed in connection with the application for a duplicate certificate. Such indemnity should be given in favor of the registrar as well as the corporation and the transfer agent, and should be in form and amount satisfactory to the registrar.

Bond registration.—While the great majority of bonds and other corporate obligations are payable to bearer and have interest coupons attached, also payable to bearer, it is provided in most bond issues that the holder of a bearer bond may have his bond registered in his name at the office of the corporation or its agent. An appointment of this kind may be made by resolution as indicated in Form 68.

Form 68.—Appointment of Bond Registrar.

———— COMPANY

CERTIFIED COPY OF RESOLUTIONS

RESOLVED THAT BANKERS TRUST COMPANY, of New York City, be and it hereby is appointed the Agent of this Company, with the title of *Transfer Agent / Registrar, for the registration of the *Principal and Interest / Principal of the —— Bonds of this Company dated —— due ——, issued or to be issued under the mortgage or

*Strike out designation not desired.

deed of trust from this Company to ——, of ——, as Trustee, dated ——, when presented to it for registration purporting to have been duly certified by said Trustee; and

FURTHER RESOLVED, that said Agent be and it hereby is authorized and directed from time to time, as any of such bonds shall be presented to it for that purpose, accompanied by instruments of assignment thereof executed by the registered holder, to transfer or discharge the registration thereof; and

FURTHER RESOLVED, that this Company lodge with said Agent (1) specimen signatures of the officers of this Company authorized to sign or who shall have signed such bonds, (2) specimen signatures of the officers of said Trustee who shall be authorized to certify or who shall have certified said bonds, (3) specimens of said bonds, and (4) a copy of said mortgage or deed of trust and of all amendments thereof and supplements thereto, for use by said Agent for purposes of comparison, and in such action and in relying upon bonds purporting to be bonds of such issue and to bear the signatures of such officers this Company will protect such Agent until written notice to said Agent that any or all of said officers respectively are no longer authorized so to sign; and

FURTHER RESOLVED, that when said Agent deems it expedient it may apply to ——, of ——, City of ——, State of ——, counsel for this Company, or to its own counsel, for advice or instructions, and for its action in good faith in reliance thereon this Company shall fully protect and hold said Agent harmless from and against all liability; and

FURTHER RESOLVED, that the —— President and the —— Secretary of this Company be and they hereby are authorized and directed to certify these resolutions under the seal of this Company and to lodge the same with said Agent.

We, the undersigned, —— President and —— Secretary, respectively of —— Company, a corporation duly organized and existing under the laws of the State of ——, do hereby certify that the foregoing are true and complete copies of resolutions duly adopted at a meeting of the Board of Directors of said Company, duly held in the City of ——, State of ——, on the —— day of ——, 19—, at which a quorum was at all times present and voted in favor of the adoption thereof, and that said resolutions are still in full force and effect.

We further certify that the specimen or specimens presented herewith of the bonds of said Company referred to in the foregoing resolutions is or are a true and correct specimen or specimens of such bonds, that the signatures of the officers of this Company and of the Trustee mentioned in the foregoing resolutions, as set forth on the accompanying sheets or lists, are the true and genuine signatures of the officers of this Company and of said Trustee authorized to sign and to certify or who have heretofore signed or certified respectively, the bonds of this Company mentioned in said resolutions, and that the accompanying copy of the mortgage or deed of trust mentioned in said resolutions and the accompanying copies of the amendments thereof and supplements thereto is or are a true copy or copies of the same.

WITNESS our hands and the seal of said Company this —— day of ——, 19—.

——, President

——, Secretary

In this discussion the agent of a corporation to register its bonds is referred to as "bond registrar," although the less common title of "bond transfer agent" is really more nearly accurate. The duties of a bond registrar are to record, as the

agent of the corporation, changes in the ownership of bonds, (1) from bearer to a designated owner, (2) from one designated owner to another, or (3) from a designated owner to bearer. As used in this chapter, the title "bond registrar" should not be confused with the title "registrar for identification" discussed in Chapter XIII (page 184).

Bonds, by their terms, may be "fully registerable;" that is, registerable both as to principal and interest, or they may be registerable as to principal only. Many issues, particularly long-term bonds, provide for both forms of registration.

Full registration.—Full registration usually is accomplished by the surrender and cancellation of outstanding coupon bonds and the issuance in their place of a bond or bonds without coupons, both principal and interest of which are payable only to the registered owner. The text of a fully registered bond is set forth in the "Telephone" mortgage (page 335). Ownership of a fully registered bond may be transferred on the books of the company only by due assignment and upon the issuance of a new registered bond issued in the name of the transferee. As in the case of stock, each transfer involves the cancellation of the existing bond and issuance of a new bond.[3] Many mortgages authorizing fully registered bonds also provide that the holder of a fully registered bond may, at his option, surrender his bond for conversion into a like principal amount of coupon bonds and that the mortgagor will provide sufficient coupon bonds to exchange all outstanding fully registered bonds. Of recent years corporations generally have adopted the practice of placing on the back of fully registered bonds a legend (see page 454) referring to this privilege and specifying by serial number the coupon bond or bonds into which each fully registered bond is exchangeable. This practice is recommended by the New York Stock Exchange.[4]

---

[3] There are exceptions to this statement. Some of the older mortgages provide that a bondholder may secure full registration by surrender of his bonds for detachment and cancellation of all unmatured coupons, and registration on the back of the existing bond, in the space ordinarily used for registration as to principal only. Once fully registered such bonds cannot be reconverted into coupon bonds. This practice is not common except under old mortgages.

[4] See New York Stock Exchange requirements, page 453.

Registration as to principal only.—Registration as to principal only does not affect the payment to bearer of the interest coupons as they mature, and is accomplished by inscribing the date of registration and the name of the registered owner, on the form provided for that purpose on the back of the bond (see page 82). Transfers are made on the books of the company kept by it or its bond registrar only upon presentation of the bond with an appropriate assignment. However, instead of the issuance of a new bond, as in the case of fully registered bonds, the date of registration and the name of transferee are inscribed by the company or registrar on the line below that used for the last previous registration of the bond. Each registration, of course, is signed by the company or its registrar, and no registration entered on the bond by other persons is valid.[5] Transferability by delivery of a bond registered as to principal may be restored by registration to "bearer" and thereafter the same bond, from time to time, may again be registered and, subsequently, released by transfer to "bearer."

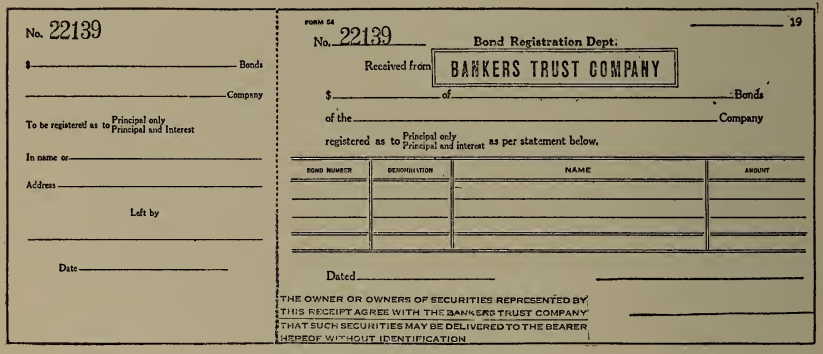
The mechanics of bond registration and transfer are similar to stock transfer, but as bearer bonds are more readily negotiable than stock (because no endorsement is required) the work of bond registration and transfer is usually assigned to a separate division rather than to the stock transfer department. Practice differs as to whether this division should be grouped with the corporate trust department or with the stock transfer department. The work is closely allied to that of the stock transfer department; on the other hand, a trust company, in nearly every instance, will be trustee for most, possibly all, of the issues for which it is bond registrar.

Records.—Because of the similarity in the work involved, the records used by a bond registration division are modeled more or less after the records of the stock transfer department.

---

[5] This is not intended as a complete statement of the legal aspects of the case. Bonds ordinarily are negotiable instruments and subject to the law of negotiable instruments. There are cases on the effect of a bondholder himself endorsing the fact of his ownership upon a bearer bond.

Form 69 is the "counter or window receipt" issued for bonds presented for registration. It is in two parts: (1) the left-hand portion is attached to the bonds as a means of identification during the process of registration and is attached to the new or registered bond when registration is completed; (2) the right-hand portion is delivered to the person presenting the bonds for registration and must be filled in, signed, and presented in order to secure delivery of the bonds on completion of registration.



No. 22139

$_____ Bonds

_____ Company

To be registered as to Principal only / Principal and Interest

In name of _____

Address _____

Left by

_____

Date _____

FORM 54

No. 22139 Bond Registration Dept.

_____ 19

Received from BANKERS TRUST COMPANY

$_____ of _____ Bonds

of the _____ Company

registered as to Principal only / Principal and interest as per statement below.

BOND NUMBER	DENOMINATION	NAME	AMOUNT

Dated _____

THE OWNER OR OWNERS OF SECURITIES REPRESENTED BY THIS RECEIPT AGREE WITH THE BANKERS TRUST COMPANY THAT SUCH SECURITIES MAY BE DELIVERED TO THE BEARER HEREOF WITHOUT IDENTIFICATION

Form 69.—Counter Receipt.

The "bond registers" (Forms 70 and 71) correspond to the transfer records of the stock transfer department. Form 70 is used for entries of bonds registered as to principal only, and Form 71 is used for recording changes in respect to fully registered bonds.

Form 72 is the registered bond ledger sheet. It is posted from sheets 70 or 71 as the case may be.

The use of Form 73 is confined to issues where the institution acting as trustee has not been named as registrar of the bonds. For example, the issuing company may register its own bonds; but, as all newly issued bonds must be certified, it is necessary for the issuing company to turn over the new bonds to the trustee for certification and at the same time to surrender the canceled bonds for notation on the trustee's records.

Reports of changes between coupon and fully registered bonds are made to the issuing company on Form 74.

Frequently corporations leave with the bond registrar a supply of fully registered bonds signed in blank, which the

For Value Received, we the undersigned registered holders of _____ mortgage bonds of _____ Company, do hereby assign and transfer the amount set opposite our respective names, to the person or persons designated below.

Bonds registered as to principal.

DATE	AMOUNT	TRANSFERRED FROM	ATTORNEY	Dr Posted	BOND NOS.	REGISTERED TO	ADDRESS	AMOUNT	Cr. Posted	Receipt Number

Form 70.—Registration Record (Principal Only).

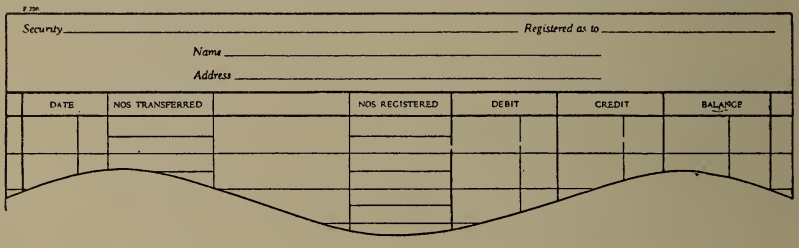
For Value Received, we the undersigned registered holders of _____ mortgage bonds of _____ Company, do hereby assign and transfer the amount set opposite our respective names, to the person or persons designated below.

Bonds registered as to principal and interest.

DATE	Coupon Bonds Cancelled		REGISTERED CERTIFICATES CANCELLED					Coupon Bonds Reissued		REGISTERED CERTIFICATES ISSUED					Receipt No.
	Numbers	Amount	From Name of	Attorney	Numbers	Amount	Dr. Posted	Numbers	Amount	In Name of	Address	Numbers	Amount	Cr. Posted	

Form 71.—Registration Record (Principal and Interest).

registrar may use when needed simply by having the bonds authenticated. It is essential that such bonds be kept under control. For that purpose the records and methods of the stock transfer department (Form 55, page 259) are applicable to bonds. Bonds are carried in the control at their face values, if expressed, and at one unit each if they are "in blank."


Security _____ Registered as to _____

Name _____

Address _____

DATE	NOS TRANSFERRED		NOS REGISTERED	DEBIT	CREDIT	BALANCE

Form 72.—Ledger Sheet.

Forms 75 and 76 are respectively the list and check used in payment of interest on fully registered bonds, if interest is paid by the bond registrar as the agent of the debtor company. In the case of many bond issues, the books for the transfer of fully registered bonds close for a short period, say, two weeks, preceding each interest payment date, to give the paying agent opportunity to prepare from the bond ledger a list of the bondholders on Form 75 from which the interest checks are drawn. The payment of registered interest involves practically the same amount of work as the payment of dividends on stock. If the number of registered bonds is large, the paying agent probably will use a set of stencils, each stencil bearing the name and address of a bondholder. This greatly reduces the amount of detail and eliminates many typographical errors. It has become the practice of many corporations to mail registered interest checks on the afternoon of the day immediately preceding the interest date. By so doing, a large number of security-holders are enabled to receive their interest on the due date. A paying agent should follow this practice only if it meets with the approval of the debtor corporation and provided, always, that funds are on deposit for the full amount of maturing interest.

As in the payment of coupons (which we shall discuss presently), the paying agent is required, in certain cases, to secure

RECORD OF _____ COMPANY _____ MORTGAGE BONDS
CANCELLED AND BONDS CERTIFIED IN THEIR PLACE

DATE	Coupon Bonds Cancelled		Registered Bonds Cancelled		Coupon Bonds Certified		Registered Bonds Certified		
	Numbers	Amount	Numbers	Amount	Numbers	Amount	Numbers	Amount	In Name of

Form 73.—Cancellation and Certification Sheet.

F 489

REGISTRATION DEPARTMENT

BANKERS TRUST COMPANY

16 WALL STREET

.....

.....

New York, ...

Gentlemen:

The following changes have been made in the registration of your Company's.....Bonds.

Very truly yours,

BANKERS TRUST COMPANY,

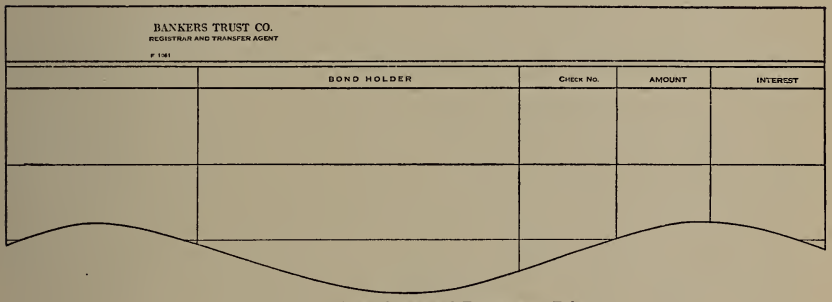
.....
Ass't Secretary

DATE	COUPON BONDS CANCELLED		REGISTERED CERTIFICATES CANCELLED			COUPON BONDS REISSUED		REGISTERED CERTIFICATES ISSUED			
	NUMBERS	AMOUNT	NUMBERS	AMOUNT	FROM NAME OF	NUMBERS	AMOUNT	NUMBERS	AMOUNT	IN NAME OF	ADDRESS

Form 74.—Report to Issuing Company.

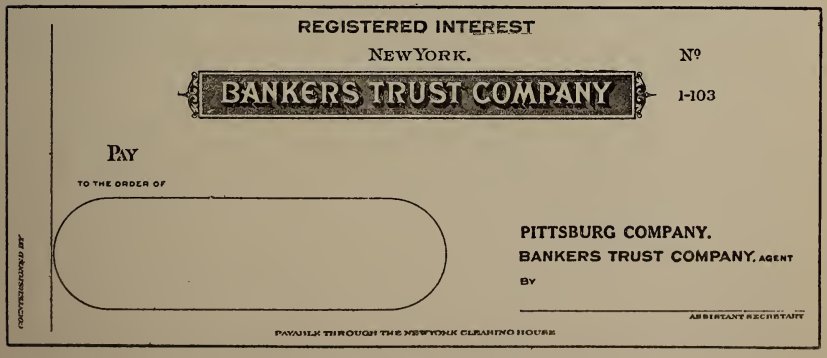
from the owner of registered bonds income tax ownership certificates in respect to the interest paid. If such certificates, when required, are not filed with the paying agent prior to the date for mailing checks, it is customary to attach ownership certificates to the interest checks and stamp the checks with an endorsement reading:

"This check not payable or collectible unless accompanied by certificate of ownership of owner of bonds."


BANKERS TRUST CO.
REGISTRAR AND TRANSFER AGENT

	BOND HOLDER	CHECK NO.	AMOUNT	INTEREST

Form 75.—Registered Interest List.


REGISTERED INTEREST

NEW YORK. Nº

BANKERS TRUST COMPANY 1-103

PAY

TO THE ORDER OF

PITTSBURG COMPANY.
BANKERS TRUST COMPANY, AGENT
BY

ASSISTANT SECRETARY

COUNTERSIGNED BY

PAYABLE THROUGH THE NEW YORK CLEARING HOUSE

Form 76.—Registered Interest Check.

Coupon paying.—The work of this department of a banking institution involves (1) payment of coupons, (2) accounting to its principal for coupons paid, and (3) services with respect to the Federal income tax. Normally, its relations with the debtor corporation[6] are those of agent to principal, but it is possible to impress with a trust, funds deposited to

[6] It should be kept in mind that the coupon paying department does not always act for the debtor corporation; it frequently makes payments as agent for correspondent banks.

pay coupons. In the case of insolvency of the debtor corporation or the service of a writ of attachment upon the paying agent, the question of whether the funds are deposited with the trust company as paying agent or as trustee would be of prime importance. In such a contingency, action by the trust company should be taken only after a review, in consultation with counsel, of all of the facts of the specific case.

Receipt of funds.—One of the first duties of the officer in charge of the department is to see that funds are received to cover, as they mature, all interest payable at his department. It is good practice to prepare, say, ten days before each maturity, a list of the issues to be paid and the amount of each. As remittances are received, they can be verified as to amount and checked off the list. A day or so before maturity the matter should be taken up with companies which have not remitted, so that on the day of maturity all necessary funds may be on hand. This practice not only goes far to avoid the confusion during a busy day resulting from withholding payment for certain issues, funds for which have not been received, but sometimes will save the debtor corporation the embarrassment which would follow an oversight in supplying funds to pay coupons at maturity.

Relations with corporate trust department.—Usually the coupon-paying division of a trust company will pay the coupons from many issues for which the trust company is not trustee, and probably it will not pay all of the issues for which it is trustee. However, in the case of issues for which a trust company is both trustee and paying agent, it is advisable for the corporate trust department to secure from this division, at each interest maturity, a statement of the amount deposited and to compare this with the amount of bonds shown by their records to be outstanding. At the time that satisfaction of a mortgage is required, it will be helpful if a record has been maintained showing that at each interest maturity date funds were deposited with the trust company to pay interest in full on all bonds at the time outstanding. Often the amount deposited to cover an interest maturity will be less than the amount indicated by the trustee's records to be required. Such a difference probably will be caused by one or more of the following factors:

1. The amount of interest on fully registered bonds paid directly by the company or its bond registrar.
2. Bonds held in the treasury of the company from which coupons are not collected.
3. Bonds pledged by the company under other mortgages or to secure loans, and from which coupons are not collected.

If the size of the issue is sufficient to justify the trouble, and the debtor corporation is willing to coöperate to the necessary extent, it is often advisable to arrange with the corporation to make a complete accounting to the trustee at each interest maturity by submitting for inspection the receipts for registered interest or canceled checks covering such payments (unless the coupon-paying agent is also agent for payment of registered interest, in which case its records will suffice) and the canceled coupons from treasury or pledged bonds. These items, together with the amount of funds deposited to pay coupons in the hands of the public, should, of course, equal the amount of interest due on the total amount of bonds shown by the trustee's records to be outstanding. While all debtor corporations are not willing to undertake such a complete periodical accounting of interest, it is a wise precaution for the trustee to make such a recommendation. Generally speaking, the trustee is not in a position to enforce such a request, for a claim of default under the mortgage based on non-payment of interest could not be set up until coupons had been presented for payment and payment refused.

Federal tax law.—The provisions of the various Revenue Acts imposing the Federal Income Tax have added considerably to the duties of this division, by requiring the submission of income tax ownership certificates with coupons presented for payment. Ownership certificates have never been required in the case of issues by the United States Government, states, and other political subdivisions thereof, and in the case of certain quasi-governmental issues such as Federal Farm Loan Bonds. Under the Federal Revenue Act of 1926 and the Treasury regulations thereunder, ownership certificates are not required in the case of bonds which do not contain the so-called "tax-free-covenant,"[7] or on any coupons which are

[7] There is an exception to this statement in the case of non-resident aliens. See page 104 for a statement regarding "tax-free-covenant" bonds.

owned by a corporation. As both the law and the regulations relating to ownership certificates are frequently changed, no attempt is made here to discuss the subject, but the reader is referred to the several services on the Federal Revenue Tax.[8] Under the law and regulations as they now stand (1926), the debtor corporation, or its duly appointed fiscal agent, is required to file the ownership certificates, accompanied by a monthly list return, with the Commissioner of Internal Revenue at Washington, D. C., on or before the 20th day of the month following the month of payment, and to file an annual return and pay the amount of tax withheld during the preceding calendar year, on or before March 15 of each year. The annual return and payment are made to the collector of internal revenue of the district in which the fiscal agent is located. Some corporations handle these returns themselves, and, in that event, the agent delivers the ownership certificates to the corporations with the monthly statements of the coupon accounts. In many cases, however, a corporation desires to be relieved of this duty and appoints the trust company which acts as its paying agent, as fiscal agent for this purpose. The following is a form used by a New York trust company to cover such an appointment.

Figure 15.—Appointment as Fiscal Agent

National Trust Company,
200 Wall Street,
New York, N. Y.

Dear Sirs:

The undersigned, ————, a corporation organized under the laws of the State of New York, with its principal office at ———— in the County of ———— State of New York, has appointed and does hereby appoint National Trust Company, a New York corporation, with its principal office at No. 200 Wall Street, New York City, the Fiscal and Paying Agent of the undersigned, for the purpose of paying and with full power to pay at the office of said National Trust Company in the City of New York, State of New York, the interest upon the —— Mortgage Gold Bonds, Series —, due —— of the undersigned corporation, dated ——, and issued under a mortgage to National Trust Company, Trustee, New York City, dated —— as such interest from time to time matures.

The said National Trust Company is hereby further constituted the agent and attorney of the undersigned for the purpose of collecting any and all income

[8] Among the authoritative services are those of (a) Prentice-Hall, Inc., (b) Corporation Trust Company.

taxes required to be collected under the Revenue Act of 1926, or any amendment thereof, and the Treasury Department regulations pertaining thereto upon the interest so paid from time to time on the above-mentioned obligations of the undersigned corporation, and is hereby authorized and empowered to make any and all payments and reports to, and to file any and all returns and accompanying certificates with the Federal Government, which, as such agent, it may be permitted or required to make or file under the Revenue Act of 1926 or any amendment thereof, and the Treasury Department regulations pertaining thereto.

Copy of this appointment is being contemporaneously filed with the Collector of Internal Revenue for the District in which the undersigned is located.

In consideration of your acceptance of this appointment, and of the performance on behalf of the undersigned of its duties in connection with the above-described obligations under the withholding provisions of the Revenue Act of 1926, or any amendment thereof, and of the Treasury Department regulations pertaining thereto, the undersigned hereby agrees to indemnify and hold harmless your company from any and all costs, expenses, attorneys' fees, and other disbursements or liabilities which may or can accrue or be incurred from acting in such capacity of Fiscal and Paying Agent under the Revenue Act of 1926, or any amendment thereof, and the Treasury Department regulations pertaining thereto.

It is understood that this appointment may be revoked at any time by the undersigned, and that the Fiscal and Paying Agent appointed hereunder may resign the appointment at its option.

Very truly yours,

_____

F 206

BANKERS TRUST COMPANY

Description of Coupon

COUPONS DUE_____

COUPONS RETURNED FOR REASON MARKED	X
Coupons not paid by us	
Name and Address of owner Required	
Coupons not due	
Present again	
No funds	
Bonds have been called.	

_____COUPONS AT_____

_____COUPONS AT_____

_____COUPONS AT_____

TOTAL

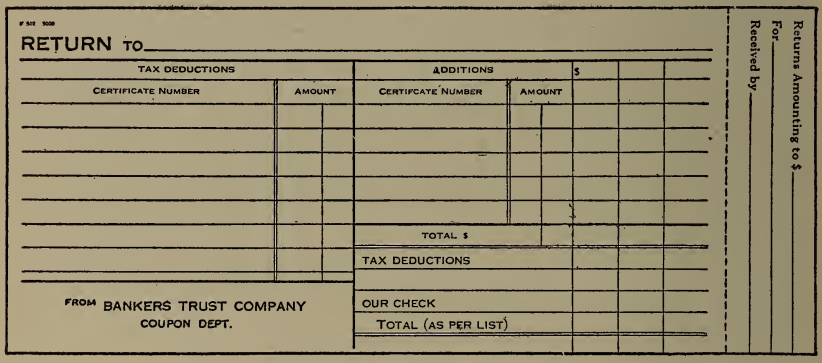
CHECK TO ORDER OF_____

PLEASE USE SEPARATE ENVELOPE FOR EACH CLASS OF COUPON

Form 77.—Coupon Envelope.

Records.—As coupons are presented for payment, most paying agencies will insist that they be enclosed in a standard form of coupon envelope, illustrated in Form 77, and that a separate envelope be used for each class of coupons. The requirement that all coupons be presented in envelopes uni-

form in size and marking, greatly facilitates the detail work of handling coupons and is a factor in insuring accuracy. While the large majority of coupons are presented for payment over the counter, some will reach the paying agent by mail, and it is the usual practice of the department to prepare its own envelopes for all mail items, thus securing complete uniformity on all coupon payments passing through the department.


RETURN TO

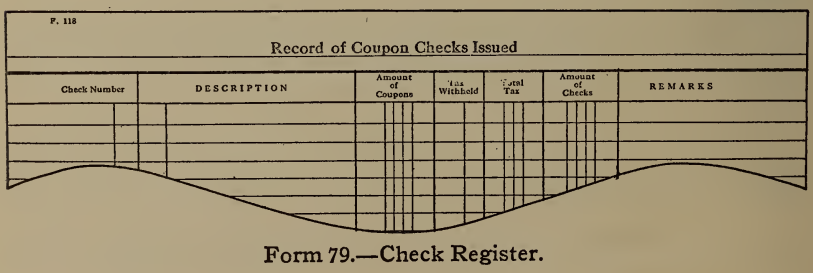
TAX DEDUCTIONS		ADDITIONS		$		
CERTIFICATE NUMBER	AMOUNT	CERTIFICATE NUMBER	AMOUNT			
		TOTAL $				
		TAX DEDUCTIONS				
FROM BANKERS TRUST COMPANY COUPON DEPT.		OUR CHECK				
		TOTAL (AS PER LIST)				

Received by_____
For_____
Returns Amounting to $_____

Form 78.—Return Envelope.

As each lot of coupons is received for payment, they are carefully examined and counted at the counter, the clerk making the verification initialing the envelope. If it is found that coupons have been presented which, for some reason, are not payable, notation is made in the space at the left of the envelope, and such coupons are enclosed in a return envelope (Form 78), for return to the presentor with the check issued in payment of the remainder of the coupons.

Upon completion of the verification the coupons are canceled, and the initialed envelopes containing the canceled coupons delivered to clerks who draw the checks in payment.


F. 118

Record of Coupon Checks Issued

Check Number	DESCRIPTION	Amount of Coupons	Tax Withheld	Total Tax	Amount of Checks	REMARKS

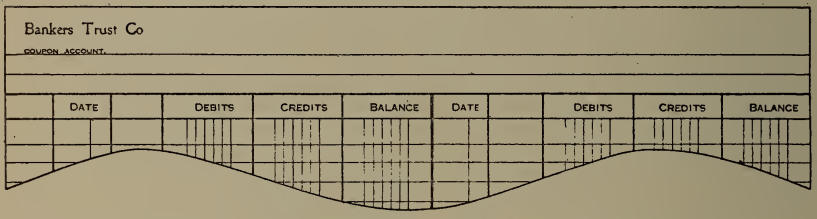
Form 79.—Check Register.

The checks, as drawn, are entered on a "check register" (Form 79). The serial number of the check is entered in the column to the left, the payee's name is entered on the same line in the column headed "Description," and on the succeeding lines of this column are entered separately the description of each class of coupons included in the payment. The amount of each class of coupons is entered on the corresponding line of the next column, and the amount, if any, of tax to be withheld on the corresponding lines in the column headed "Tax Withheld." On the last line of the entry under the headings "Total Tax" and "Amount of Checks" is entered, respectively, the total amount of tax to be withheld and the amount of the check drawn in full payment of the block of coupons covered by the entry. The right-hand column headed "Remarks" may be used to note the return of coupons improperly presented and for other purposes.

Coupons are seldom presented for payment by the actual owner, who usually finds it more convenient to collect them through his bank. For example, in the case of coupons payable in New York, the actual bondholders scattered throughout the country will, at or just before, the maturity date, deposit their coupons for collection with their local banks. Each local bank will assemble its New York coupons and ship them to New York for collection, or perhaps forward them for collection to its banking correspondent in the nearest large city which, in turn, will assemble all New York coupons and send them for collection to its correspondent in New York. As a consequence, coupons for payment are received by the paying agents in the financial centers largely through the other banks in the same city and in substantial amounts. Thus, many of the entries on the check register will include several different issues of coupons, and each issue will be composed, perhaps, of several small lots of coupons originating in different sources.

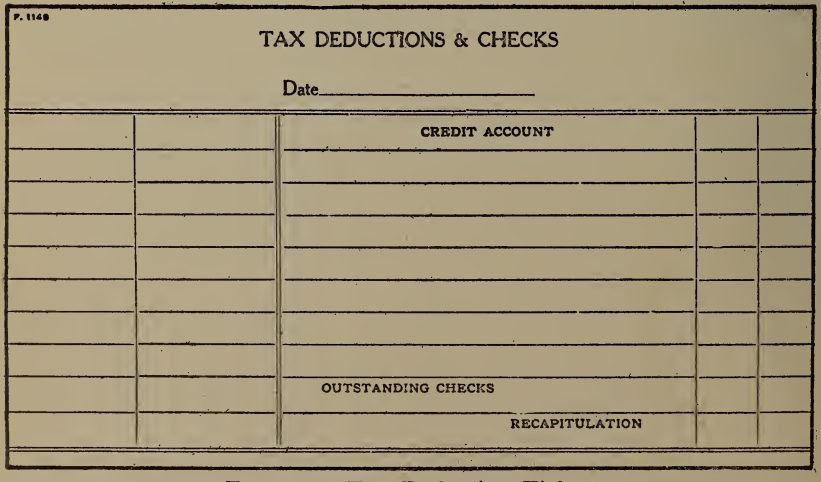
At the end of the day the coupon envelopes are sorted into issues and again totaled and the aggregate proved to the total of the check register. The total payment of each issue is entered in the cash journal of the department (which is similar to the corporate trust journal illustrated on page 68) and subsequently posted to the various accounts in the ledger

(Form 80). The tax withheld as shown by the check register is entered on tickets (Form 81), and from these tickets posted to the ledger in separate tax accounts carried on Form 80. The total taxes withheld in respect to each issue are later paid over to the debtor corporation, or directly to the collector of internal revenue, if the paying agent acts also as fiscal agent.



Form 80.—Coupon Ledger.

Until recently it has been the custom of paying agents to carry a separate ledger account of each maturity as well as each issue of coupons. As a number of coupons of each maturity normally remain outstanding for considerable periods, sometimes years after maturity, the number of accounts on the ledgers of the active paying agents became a burden, and many of the larger agents have now discontinued carrying a separate account for each maturity and, instead, carry simply one account for each issue.



Form 81.—Tax Deduction Ticket.

If the paying agent does not act as fiscal agent under the Federal Income Tax Law, the ownership certificates are permitted to remain with the canceled coupons in the payment envelopes. If, however, the paying agent acts as fiscal agent, the ownership certificates are removed on the second count of the coupons and are filed for listing on the monthly list returns to the Commissioner of Internal Revenue at Washington, D. C.

603

BANKERS TRUST COMPANY

_____ 192__

We are today forwarding you, accompanied by certificates of ownership, the following cancelled coupons which have been paid and charged against your account, and we would request that they be counted and examined as soon as possible, advising us promptly of any differences. If no notice of any discrepancy is received within thirty days from the date hereof, this statement of account will be considered correct.

Description of Coupons	Number of Coupons	@	Debits			Date	Credits			
							Balance			
Balance										

Received from BANKERS TRUST COMPANY the coupons described in its statement aggregating $_____ accompanied by certificates of ownership, said coupons having been paid out of funds deposited for that purpose. The balance of $_____ remaining to the credit of this coupon account as per statement rendered. _____ 19___, is correct.

_____

By _____

Please sign officially and return in enclosed envelope.

Form 82.—Coupon Account, Statement and Verification.

Statements on coupon accounts are rendered periodically, usually monthly, and the canceled coupons returned to the debtor corporation as vouchers. Form 82 illustrates a coupon account "statement and verification."

Audit.—As coupons are bearer instruments, and readily negotiable at maturity, it is most important to maintain a current audit of the work of the coupon-paying division. In many companies this is accomplished by a force of auditors assigned to a separate cage, attached to the coupon-paying division. Upon proof of each day's work, the canceled coupons are delivered to the auditors, who verify them with the total cash disbursed during the day and retain the canceled coupons until the monthly statements are prepared by the paying division. These statements are then delivered to the auditors who verify the total debits shown thereon with the aggregate of canceled coupons of the issue in question, which are in their possession. If the two totals agree, the canceled coupons and statement are sent to the debtor corporation. The return envelope enclosed with the statement is addressed to the audit department. When the customer's verification is received and reconciled to the ledger account, it is delivered to the coupon-paying division for filing.

Payments for correspondents.—In the larger cities especially, coupons often are paid for the account of banks in other cities acting as paying agent for the same issue. For example, an issue of bonds is sold in Chicago. The bonds provide that the interest thereon shall be payable at the holder's option at, let us say, the Tenth National Bank of Chicago or the Fifth Trust Company of New York. Normally the debtor corporation will deposit funds for the payment of the interest, as it matures, on the entire issue, with whichever of the two banks it considers the principal paying agent, and will request that bank to arrange with the other to honor such coupons as may be presented to it. Assuming that the deposit was made with the Tenth National Bank of Chicago, that bank would then advise the Fifth Trust Company in New York of the full details of the issue and request it, after receipt of advice that the funds necessary to cover the payment have been deposited with it (the Chicago bank), to pay

FIFTH AVENUE OFFICE
5TH AVE. AT 42ND ST
NEW YORK

BANKERS TRUST COMPANY

FIFTY-SEVENTH ST. OFFICE
MADISON AVE. AT 37TH ST.
NEW YORK

PARIS OFFICE - 3 & 5 PLACE VENDOME
LONDON OFFICE - 26 OLD BROAD ST E. C. 2

WALL STREET OFFICE
16 WALL STREET
NEW YORK.

COUPON DEPARTMENT

WE CHARGE YOUR ACCOUNT FOR COUPONS PAID AS LISTED,
YOURS VERY TRULY.

ASST. SECRETARY.

Description	Amount
Total	

F.513

Form 83.—Daily Advice.

BANKERS TRUST COMPANY

_____ 192__

We have this day forwarded you a package of properly cancelled coupons as stated below, accompanied by certificates of ownership, the said coupons having been paid and charged to your account.

Description of Coupons	Number of Coupons	@	Amount	Total

Received from BANKERS TRUST COMPANY the coupons described in its statement, dated_____aggregating $_____accompanied by certificates of ownership, said coupons having been paid and charged to our account.

by_____

Please sign officially and return in enclosed envelope.

Form 84.—Monthly Statement and Receipt.

such coupons of the issue and maturity as may be presented, charging the amount thereof to the draft account of the Tenth National Bank. Under such an arrangement it would be usual for the Fifth Trust Company to send daily advices of payments to the Tenth National Bank and to return the canceled coupons monthly. Form 83 illustrates the daily "advice" and Form 84 the monthly "statement and receipt" for canceled coupons.

Coupons from called bonds.—In the case of coupons from bonds which have been called for redemption prior to maturity, it is important for the coupon department to prevent the encashment of coupons maturing after the date of redemption. In the case of a partial call, where numbers have been

selected by lot, this requires an examination of the serial numbers of all coupons presented from such issues.

While it is not a part of the duty of the paying agent, it is the usual practice, in the case of coupons detached from called bonds and maturing on the redemption date, if unaccompanied by the bonds themselves, for the paying agent to

NOTICE OF BONDS CALLED FOR REDEMPTION

The bonds to which the coupons covered by this check pertain have been called for redemption, or have otherwise become due. To avoid loss of interest to bondholder, the bonds (if not already paid) should be promptly presented for payment to our Corporate Trust Department. Please see that this notice is returned to the party from whom the coupons were received by you.

BANKERS TRUST COMPANY
NEW YORK CITY

F. 3096 M73

Form 85.—Redeemed Bond Notice.

make an effort to bring to the bondholder's attention, the fact that the bonds to which the coupons pertain have been called for redemption. The usual method is to attach to the check issued in payment of the coupons, a notice along the lines of Form 85, or, where bonds have been selected by lot, a copy of the redemption notice giving numbers of the bonds so drawn. Unfortunately, it is most difficult to be sure that the notice will reach the actual bondholder. As previously explained, coupons normally pass through a chain of collecting banks before reaching the paying agent and, as no record of the serial numbers of the coupons ordinarily is kept by the collecting banks, it is frequently impossible for the collecting banks properly to pass the notice back.

To draw the attention of bondholders to the fact that their bonds have been called for redemption, some paying agents return coupons maturing on the date of redemption (if presented apart from the bonds) and notify the holders thereof that both bonds and coupons will be paid if presented simultaneously. While done for the protection of bondholders and

to prevent loss of interest on their part, this practice meets with frequent objection from bondholders, particularly in cases where the bonds and coupons have been sent separately and reach the paying agent through different channels.

Retention of canceled coupons.—Of recent years a number of corporations, to relieve themselves of the detail of handling canceled coupons have requested the paying agent to retain the canceled coupons, to cremate them periodically, and to furnish the company with proper cremation certificates. The theoretical objection to this plan is that the debtor corporation receives no vouchers for the funds which are disbursed on its behalf. If the trust company which is paying agent is also trustee for the issue, the debtor corporation may advance the argument that its obligation is ended when it has paid to the trustee, on behalf of the bondholders, funds sufficient to care for the matured interest. As a matter of fact, this is not strictly true, as the coupon is the company's obligation and, if unpaid, may be the basis of a suit by the holder against the company, although the company in turn probably would have recourse against the trust company as paying agent. Another factor from the trust company's point of view is that in dealing with coupons which are practically the equivalent of cash, it is most desirable to have a monthly verification which is secured through the practice of rendering monthly statements and returning canceled coupons.

Stop payments.—Coupons against which "stop payments" have been filed are even more difficult to detect than "stopped" bonds. Paying agents, generally, take the position that they will not assume any responsibility for preventing the payment of coupons against which "stop" notices have been filed; but they do undertake to use their best efforts to withhold payment, at least until they have communicated with the person who has filed the "stop" notice. If, in such a situation, the latter insists that his "stop" notice be enforced, the proper procedure on the part of the paying agent is far from clear. In some cases the presentor of the coupons is requested to furnish evidence of the fact that he is a holder in due course for value. If satisfactory evidence on this point is received, the paying agent probably will make payment of the coupons (which are bearer obligations) despite the "stop" notice and

so notify the person who filed the "stop," at the same time offering to furnish him with such information as may be available regarding the facts surrounding the payment. In any case where conflicting claims arise it is always advisable to consult counsel before making payment as the particular circumstances of the case in hand may have an important bearing on the legal aspects of the situation.

"Stop" notices relating to coupons should be acknowledged with a letter following the general form suggested on page 87 with such changes in detail as may seem appropriate.

Return of coupon money.—As stated earlier in this discussion, funds for the payment of coupons ordinarily are deposited with a trust company as paying agent and, if this is so, the debtor corporation as principal has the right to withdraw the balance of the funds at any time. This, of course, would not hold true if the funds on deposit had been impressed with a trust for the benefit of the coupon-holders. In the case of a mortgage for which a trust company is trustee as well as paying agent, the corporate trust department, upon satisfaction of the mortgage, should notify the coupon department and the coupon department should thereafter consult the corporate trust department before releasing any of the funds to the debtor corporation. This is for the reason that, through the satisfaction of the mortgage the trust company has given up its lien and, consequently, may be held liable to the bondholders for the payment of sums remaining due on account of principal and interest. Before releasing the mortgage the trustee would have satisfied itself that funds were on deposit for the full payment of principal and interest due, and it would object, of course, to the return of any of these funds to the debtor corporation until the obligations which the funds were intended to meet had been properly canceled and surrendered to it.

Chapter XIX

FEES

Fees.—In recent years many banking institutions have been carefully analyzing the relation between income and expense. The result, in so far as it relates to the work of the corporate trust and agency group, has been, in many cases, a distinct shock. The executive of a successful department should always have available full information as to the expenses of his department both direct and indirect, so that he can readily determine the current margin of profit. A condition producing unsatisfactory results must be corrected if the department is to justify its existence to the organization as a whole. Such a condition may be improved in one of three ways:

1. *Increased volume of business.*—Because of the extremely technical nature of fiduciary business, any department to operate efficiently, must be organized on a basis which involves a substantial expense. Consequently, many trust departments, particularly during the earlier years of their existence, fail to show a satisfactory profit, because the volume of business handled has not reached the point required to carry the minimum efficient organization. In such a situation the entire organization of the institution should coöperate with the trust officer in his effort to increase the volume of business.

2. *Decreased expenses.*—The possibility of decreasing the expense of operation should, as in all lines of business, never be lost to sight; but the desire for increased profits should not be permitted to result in decreasing expenses to the detriment of service.

3. *Increased compensation.*—Assuming that a careful analysis of the situation indicates that the trust department, as compared with competitors, is doing a satisfactory volume of business, and its expenses are reasonable, the one remaining method of improving conditions, and the natural and proper one, is through an increase in the scale of fees.

More important, however, than a mere increase in rates is standardization on a proper and equitable basis. Competition in rates is, in the long run, bound to react unfavorably on trust profits; and it also is likely, through the necessary effort to cut expenses to meet reduced income, to affect adversely the quality of trust service.

The question of standard rates has been carefully studied by the Trust Company Section of the American Bankers Association, by the Corporate Fiduciaries Association of New York City, and by similar organizations of trust officers in some of the larger cities. Varying conditions in the different financial centers have made it difficult to adopt standard rates applicable to the country as a whole, but real progress along these lines has been made recently in some cities.

The following schedules covering corporate trusts and corporate agencies are those in general use in New York City. The fees quoted are intended to be minimum rates and, accordingly, are subject to increase if the features of a particular account so warrant.[1]

Corporate Trusts.

Initial fee.—If preliminary negotiations are involved, if there is collateral to be received, if the trust indenture is executed in a large number of counterparts, if the "closing" involves the satisfaction of prior mortgages, the payment of prior issues, or the receipt and payment of outstanding obligations, such as promissory notes, etc., and/or the delivery of certain bonds of the issue against cash or otherwise in accordance with the instructions of the obligor, or, in other words, wherever the opening of the trust has resulted in more work to the trustee than the mere execution of the trust instrument in a small number of counterparts, there should be charged an initial fee of $100 or more, the exact amount to be arrived at by an appraisal of the services rendered.

Certification charges.—For the authentication of temporary bonds in large denominations against which trust receipts or interim receipts are issued, or for the authentication of large temporary bonds which are to be used as collateral to

[1] The rates published herein are based on the schedule of fees approved by the Corporate Fiduciaries Association of New York City (1926).

a note issue, a parent company bond issue, for bank loans, or which are to be held in the treasury of the Company, or otherwise: $100 for the first $1,000,000 principal amount; $50 for each $1,000,000 in excess thereof, with a maximum fee of $1,000.

For the authentication of temporary bonds of other denominations: $2 per $10,000 bond; $1 per $5,000 bond; 30 cents per $1,000 bond; 20 cents per $500 bond; 10 cents per $100 bond.

For the authentication of definitive bonds: $3 per $10,000 bond; $1.50 per $5,000 bond; 50 cents per $1,000 bond; 30 cents per $500 bond; 20 cents per $100 bond.

The minimum charge for the certification of an entire issue of bonds or notes should be $250 except for so-called "real estate" mortgages on single parcels for which the minimum is $100.

For signing definitive trust certificates under Philadelphia plan: Requiring two signatures of officials of the bank or trust company—75 cents per $1,000 certificate.

For the countersignature or registration (for identification as to issuance) of temporary or definite bonds, in denominations of $1,000, $500 or $100, 25 cents per signature.

For the issuance of bankers' receipts, interim receipts, or trust receipts: against the deposit of bonds, 50 cents each; against cash, 25 cents each, if cash remains on deposit 10 days or more, otherwise 50 cents. For sorting, listing, and cremating bankers' receipts, interim receipts, and trust receipts, and interest warrants detached therefrom: regular cremation rates (see page 307).

Annual fees.—

(a) For ordinary services as Trustee of unsecured note or debenture issues, where there are no periodic duties other than general to be performed by the Trustee:

NOTE.—The fees quoted above for the certification or countersignature of temporary bonds and for the issuance of bankers, interim, or trust receipts cover also the exchange of the temporary bonds or receipts for definitive bonds, but not out-of-pocket expenses in connection with the exchange, such as postage and insurance on shipments of definitive obligations to out-of-town holders.

On authorized issues up to 1,000,000 principal amount ..... $100 per annum
On authorized issues, 1,000,000 to 3,000,000 ..... 150 per annum
On authorized issues, 3,000,000 to 5,000,000 ..... 250 per annum
Over 5,000,000 ..... proportionately

(b) For ordinary services as Trustee of unsecured note or debenture issues, collateral trust or equipment trust indentures, or real estate mortgages, where there *are* specific duties to be performed each year by the Trustee:

On authorized issues up to $1,000,000 principal amount .....$150 per annum
On authorized issues, 1,000,000 to 2,000,000 ..... 200 per annum
On authorized issues, 2,000,000 to 3,000,000 ..... 250 per annum
On authorized issues, 3,000,000 to 5,000,000 ..... 300 per annum
On authorized issues, 5,000,000 to 7,500,000 ..... 400 per annum
On authorized issues, 7,500,000 to 10,000,000 ..... 500 per annum
Over 10,000,000 ..... proportionately

When the bonds are issued in two or more series, the annual fee is based on the aggregate principal amount of all series of securities outstanding.

For holding stock as collateral.—Minimum annual charge of $25.

$100 per annum for the first .....$1,000,000 par value
50 per annum each on the next ..... 4,000,000 par value
25 per annum each on the next ..... 5,000,000 par value
12.50 per annum each on all above .....10,000,000 par value

Possible services—Statements to Company and its auditors, vault space, substitutions, collections and disbursements, proxies.

NOTE.—If the collateral is all in one piece or very few pieces, or if there is no activity or very little activity in connection with collateral, the above schedule should be cut in half, with a minimum annual fee of $25.

For holding bonds as collateral.— Minimum annual charge of $25—1/40 of 1 per cent per annum on the first $5,000,000 principal amount.

$200 per annum for each million on next ..... $5,000,000 principal amount
150 per annum for each million on next ..... 5,000,000 principal amount
100 per annum for each million on next ..... 5,000,000 principal amount
50 per annum for each million over ..... 20,000,000 principal amount

Possible services—Statements to Company and its auditors, cutting and collection of coupons, or cutting, cancellation and delivery of coupons, substitutions, vault space.

NOTE.—If the collateral consists of bonds which have been refunded and are stamped or canceled — one-half of the above charge should be made, except that the minimum annual charge is to be not less than $25.

For "holding alive" in the Sinking Fund, the above fees should be charged if the coupons are to be cut semi-annually; if the coupons are not to be cut, one-half of the above charge

should be made, except that the minimum annual charge should be not less than $25.

Temporary bonds and registered bonds in large denominations are to be classed as stock and the charge for holding same to be one-half of regular stock collateral charge.

Mixed collateral of bonds and stock to be charged at rate quoted on each class.

For holding uncertified bonds.—Bonds held for future certification and delivery, except bonds held for purpose of exchange for bonds of other denominations, a charge of $50 per annum for each 500 pieces so held.

Purchases and redemption.—At maturity, or by call as a whole of the entire amount outstanding:

1/10 of 1% on first	$500,000 principal amount
1/20 of 1% on next	500,000 principal amount
1/30 of 1% on next	4,000,000 principal amount
1/40 of 1% on excess over	5,000,000 principal amount

For the purchase of bonds or notes for account of the sinking fund by advertising for sealed offerings, or in the open market without advertisement, for each operation,

1/8 of 1 per cent of the principal amount of the bonds or notes so redeemed on the first $100,000 principal amount.

1/16 of 1 per cent on the next $100,000 principal amount.

1/32 of 1 per cent on all over $200,000 principal amount, with a minimum fee of $25 per operation.

For the redemption of bonds or notes through call of part of the issue outstanding, 1/10 of 1 per cent of the principal amount of the bonds or notes so redeemed, with a minimum fee of $25 per operation.

In lieu of the above fees, funds so to be used in the purchase or redemption of bonds may be deposited with the Trustee without interest from one week to two weeks in advance of the date upon which they will first be subject to use, depending upon the character of the operation involved.

Conversion of bonds or notes.—For the conversion of bonds into other securities, 1/20 of 1 per cent of the par value of bonds or notes converted, with a minimum of $25 per annum, to start from the date of the first conversion.

Cremation.—For cremating bonds; interim or trust receipts, and coupons, interest or dividend warrants:

$15 per 1,000 bonds, etc., if sorted and listed by the trustee.
$8 per 1,000 bonds, etc., if sorted and listed by the corporation.
$8 per 1,000 coupons, etc., if sorted and listed by the trustee.
$4 per 1,000 coupons, etc., if sorted and listed by the corporation.
Minimum fee for a single cremation $10.

Partial releases.—For each release of property, a minimum charge of $25, the exact charge being determined by the value of the property involved and the amount of work involved.

Refunds of state taxes.—If the trustee is called upon to handle tax refunds there will be a special annual fee dependent upon the amount of work involved.

Supplemental indentures.—For executing supplemental indentures, a fee by appraisal of the services rendered, with a minimum of $50 per indenture.

Extraordinary services.—For performing any services not contemplated at the time of the execution of the indenture, a fee to be determined by appraisal in an amount to fit the service.

Execution of satisfaction pieces.—For this service the exact charge depends on the value of final services rendered at the closing of the trust, the minimum fee being $25.

Exchange of temporary for definitive securities as agent for another corporation.—Twenty cents for each bond delivered, with a minimum of $50 for any one account.

Trustee of foreign insurance companies.—For holding securities of such companies, an annual charge of 1/10 of 1 per cent of the average principal amount held during the year.

Industrial note issues.—For acting as Trustee or Registrar (as to issuance) of issues secured by large numbers of promissory notes, ½ of 1 per cent per annum of the total face amount of collateral received during each year. This charge covers all services, including certification and delivery of bonds, payment of bonds and coupons, registration of bonds, custody and withdrawal of collateral, cremations, and all other services.

NOTE.—These fees do not include counsel fees nor any other expenses or disbursements which may be incurred on account of the obligor.

Fiscal or Paying Agency Services under Foreign Corporation or Foreign Governmental Issues.

Authentications.—For countersignature of temporary receipts or certificates and definitive bonds or notes, 50 cents per signature.

Paying agent of coupons.—For acting as Paying Agent and Fiscal Agent of coupons or registered interest, ¼ of 1 per cent of the interest moneys disbursed: minimum annual fee $10.

For all other services, including the handling of the Sinking Fund, if any, optional redemptions, redemption at maturity, annual fees for ordinary services as Paying or Fiscal Agent, cremation services, etc., — per cent of the principal amount of bonds redeemed. (In the blank space there should be inserted the percentage of the principal amount of the issue which will be equivalent to the aggregate fees for the services included, at the rates given in the corporate trust schedule.)

Corporate Agencies.

TRANSFER AGENT (STOCK)

Minimum Charge (Per Annum).

Charges are based on
- A. Number of accounts.
- B. Number of certificates.
- C. Number of agencies.

For the issuance of 500 certificates and maintenance of 500 accounts, or any part thereof	$500.00
For issuance of additional certificates, each	.25
For the maintenance of additional accounts, each	.50
For furnishing reports of daily transfers to co-transfer agencies, additional charge per agency per annum	200.00
For each out-of-town certificate posted, debit or credit	.10
For posting out certificates on the closing of a transfer agency or the retiring of stock — per certificate	.12½

STOCKHOLDERS' LISTS

One list is furnished without charge for each class of stock; for additional lists, for each 1,000 accounts	25.00
For additional copies of lists, for each 1,000 accounts	12.50

REGISTRAR (STOCK)

Minimum Charge (Per Annum).

For registration of 500 certificates	$250.00
For registering each certificate in excess of 500	.15
For each co-registrar in other cities	125.00
For posting out certificates on the closing of a registrar agency or retiring of stock, for each certificate	.07½

DIVIDEND DISBURSING AGENT

For each dividend—

1 to 250 checks	62.50
251 to 500 checks	100.00
501 to 750 checks	131.25
751 to 1,000 checks	150.00
For each check over 1,000	.12½

SPECIAL WORK

For addressing envelopes, per 1,000	10.00
For addressing envelopes, folding and inclosing one report or circular, including stamping envelopes, mailing, etc., per 1,000	20.00
For addressing envelopes, folding and inclosing more than one enclosure, stamping envelopes, mailing, etc., per 1,000	25.00

If duplicate names of holders of more than one class of stock are to be eliminated, an extra charge of 25 per cent should be made.

For preparing and making certificates of distribution required by the Listing Committee of the Stock Exchange, $10 per 1,000 ledger sheets analyzed.

Other special services by appraisal.

NOTE.—The cost of all stationery such as binders and ledger sheets, transfer and registration sheets, window receipts, checks, paper used for lists, etc., and disbursements, such as postage and insurance, are to be added to the regular charges for services as Transfer Agent or Registrar.

Registrar and transfer agent of bonds.—For acting as Registrar as to principal only, a minimum annual fee of $100 to cover the registration of 100 bonds; registrations in excess of 100 in any one year, 30 cents each.

For acting as Registrar and Transfer Agent of issues registerable as to principal and interest, a minimum annual fee of $150 to cover the registration of 150 bonds in any one year; registrations in excess of that number, 50 cents each.

For furnishing reports of registrations to out-of-town agents, additional charge per agency per annum, $50.

Paying agent of coupons or registered interest.—¼ of 1 per cent of the interest moneys received, with the provision that no charge will be made if the Paying Agent is given thirty days free use of the interest moneys. The minimum annual fee for this service is $10.

Fiscal agent (making returns to the Collector of Internal Revenue).—1/16 of 1 per cent of the interest moneys received, in addition to the fee for disbursing interest.

For acting both as paying agent and fiscal agent, the minimum fee is $25 per annum.

Reorganization department fees.—In the arrangement of fees, the work of the reorganization department presents the greatest difficulty. One reorganization differs from another to such an extent that, in New York at least, no standard basis of charges has been adopted by the Corporate Fiduciaries Association.

The rates mentioned below are gathered from a review of the fees charged by a New York trust company and are presented merely to give an idea of the factors entering into reorganization department fees and to give a suggestion of the rates applying to the various services.

Deposit of securities:
Bonds 1/16 per cent to 1/10 per cent of the principal amount.
Stock — 5 cents per share.

Issuance of certificates of deposit:
Unlisted Certificates — 50 cents each.
Listed Certificates, including exchange of temporary certificates of deposit and reports to Stock Exchange — $1 each.

Transfers of certificates of deposit:
50 cents for each certificate issued.

Delivery of new securities:
1/10 per cent to 1/4 per cent of the principal amount.

An additional charge may be made for the custody of the deposited securities (particularly if the reorganization extends over a period of several years). If subdepositaries are appointed the main depositary usually charges a commission on the securities taken in by the subdepositaries. Mailing circulars and other special work for the committee also calls for an extra charge.

As a matter of practice, it is almost impossible, in most reorganizations, to arrange a basis of charges until the reorganization is completed. The amount is then largely a matter of negotiation between the committee and the depositary; but, except under special circumstances, the basis outlined above may fairly be used by the depositary in calculating the amount which it suggests as its fee.

For services rendered by the reorganization department in connection with capital subscriptions, assuming that there are no unusual circumstances, probably a commission of ¼ per cent on the amount of funds handled would be about the average charge by New York trust companies, with an extra charge for transfers of subscription warrants or purchase

certificates. The charge for services of this nature is frequently modified if the agent receives free use of the funds for a substantial period.

ARRANGEMENT OF FEES

ACCOUNT

INDENTURE OR MORTGAGE DATED

ACCEPTANCE

CERTIFICATION

TEMPORARY BONDS

COUPONS

REGISTERED

ANNUAL FEE MONTH BILLED

CREMATION

BONDS

COUPONS

PAYMENT OR REDEMPTION

BONDS

COUPONS

CONVERSION AGENT

FISCAL AGENT

OVER

Form 86.—Fee Basis Sheet (Front).

Rates in New York City.—It is but fair to point out that, generally speaking, the rates in New York City are lower than those in effect elsewhere in the country. This is to be expected as the volume of business in New York is still larger, by far, than in any other city. While for many years the volume of personal trusts in the larger cities such as Chicago, Philadelphia, Boston, St. Louis, Cleveland and San Francisco, has been considerable, it has been only of recent years that

the trust companies and banks in these and other cities have come into real competition with the institutions of New York for the more important pieces of corporate trust and corporate agency business.

ACCOUNT

REGISTRATION

$ PER ANNUM TO COVER REGISTRATIONS. EACH EXCESS IN ANY ONE YEAR

REMARKS:

PROPOSED BY

REVISED BY

ACCEPTED BY

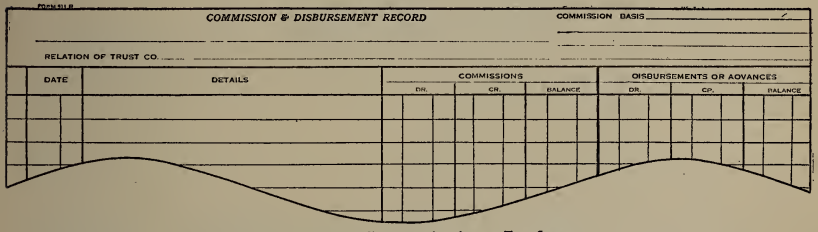
Form 86.—Fee Basis Sheet (Back).

Fee records and billing.—Second in importance only to the charging of adequate fees comes the matter of recording and billing. The following records, in use by the corporate trust department of a large trust company, are typical of the fee records of all of its fiduciary departments.

Form 86, known as the "fee basis sheet," is prepared from the letter or official memoranda confirming the fee basis as arranged on each trust. It is inserted in the commission or

fee ledger (next discussed) immediately preceding the account of the trust to which it relates.

Form 87, the "commission ledger" sheet, is largely self-explanatory. The entries in the debit column under "Commissions" are made from Form 89 as bills are rendered; the


COMMISSION & DISBURSEMENT RECORD

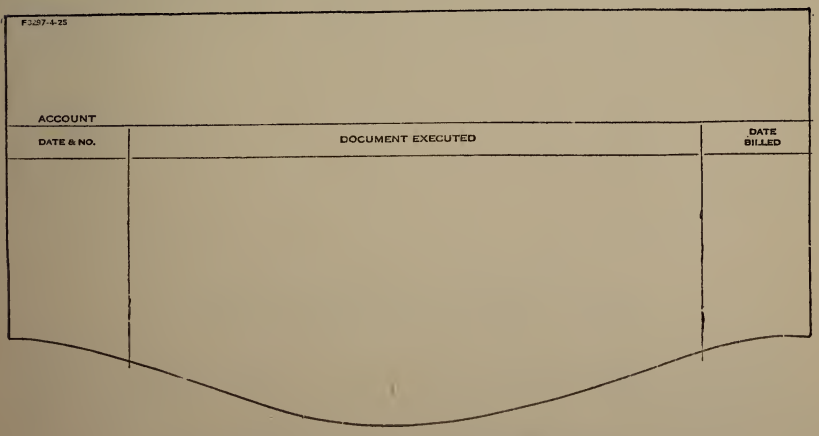
COMMISSION BASIS

RELATION OF TRUST CO.

DATE	DETAILS	COMMISSIONS DR.	COMMISSIONS CR.	COMMISSIONS BALANCE	DISBURSEMENTS OR ADVANCES DR.	DISBURSEMENTS OR ADVANCES CR.	DISBURSEMENTS OR ADVANCES BALANCE

Form 87.—Commission Ledger.

entries in the credit column are posted from the trust department cash tickets as remittances are received. Debit and credit entries under "Disbursements or Advances" are made from cash tickets as payments for account of the trust are made by the trustee, or as remittances are received by the trustee in reimbursement therefor. Disbursements are car-


F3297-4-25

ACCOUNT

DATE & NO.	DOCUMENT EXECUTED	DATE BILLED

Form 88.—Commission Work Sheet (Front).

ried on the general books as Accounts Receivable and the trust department is required periodically to reconcile the total of its balances with the control account. Some trust companies follow the practice of carrying their outstanding bills as accounts receivable. Much may be said in favor of this practice, from an accounting point of view. If this is done,

it is necessary to debit "Accounts Receivable" and make a corresponding credit to "Commissions" as bills are rendered.

Form 88 is the "work sheet" which is written up currently as services are rendered. The information is obtained from several sources, principally:

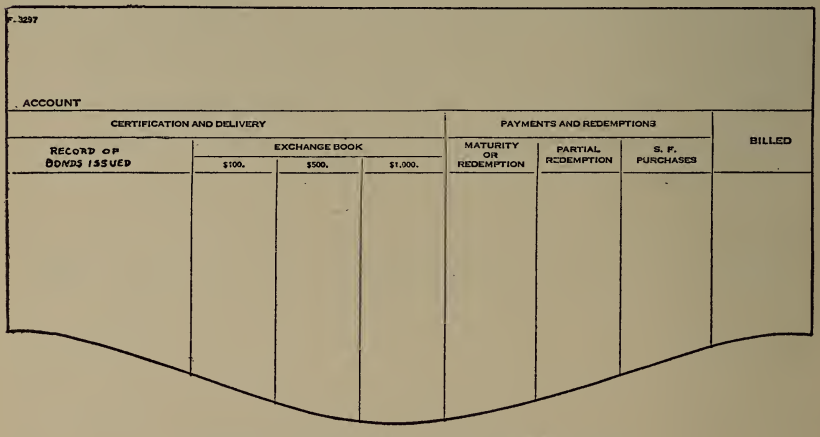
(a) The bond certification blotter.

(b) The documents executed record, as to the execution of new trusts, releases, supplemental indentures, and other instruments involving a charge.

(c) The redemption record, in connection with the payment or redemption of securities.

(d) The commission "Tickler," comprising cards indexed by date, for all services calling for annual or periodical charges.

These records are described and illustrated in Chapter IV.


F-3297

ACCOUNT

CERTIFICATION AND DELIVERY				PAYMENTS AND REDEMPTIONS			BILLED
RECORD OF BONDS ISSUED	EXCHANGE BOOK			MATURITY OR REDEMPTION	PARTIAL REDEMPTION	S. F. PURCHASES	
	$100.	$500.	$1,000.				

Form 88.—Commission Work Sheet (Back).

Form 89 illustrates the bill used for fees. It is prepared in triplicate, the original and duplicate being forwarded with the request that the duplicate be returned with the remittance. The triplicate copy is retained in the trust department files.

Form 90 is the "disbursement voucher" retained as a receipt for all payments made by the trust company for account of its corporate trusts. The amount of outstanding disbursements are, of course, added to any bill rendered. In addition to this, the commission clerk is required to examine the trial balance of the departmental disbursements monthly, and to

render bills for any sizable disbursements, where no commissions are billable within a reasonable time.

F. 501 A

BANKERS TRUST COMPANY

CORPORATE TRUST DEPARTMENT

16 WALL STREET.
NEW YORK.

Dear Sir

We submit our bill for services as specified, and shall appreciate a remittance at your convenience.

Very truly yours,

№ 3086

Assistant Secretary.

Please return the duplicate of this bill with your remittance. Unless requested, no receipt, other than our endorsement on your check will be given

Form 89.—Commission Bill.

DISBURSEMENT VOUCHER
CORPORATE TRUST DEPARTMENT

New York,

No 3114

ENCLOSED FIND CHECK FROM BANKERS TRUST COMPANY IN SETTLEMENT OF BILL ATTACHED:

ACCOUNT

_____ 192

RECEIVED of the BANKERS TRUST COMPANY, 16 Wall Street, New York City

_____ DOLLARS,

in full settlement of account stated above.

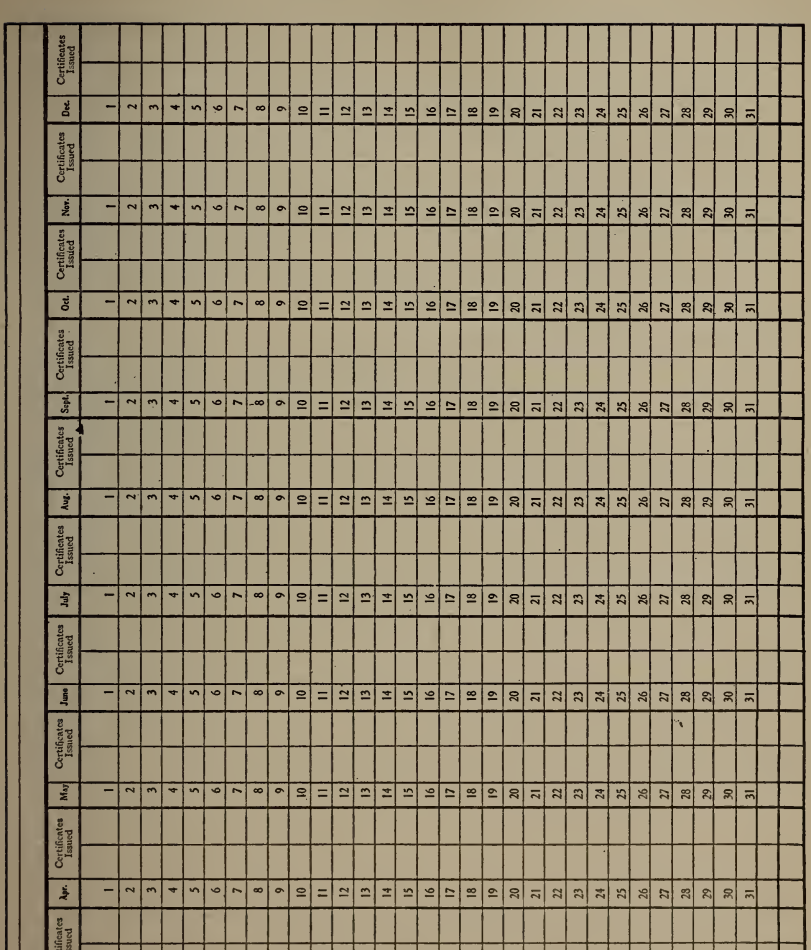
_____

KINDLY RECEIPT AND RETURN

Form 90.—Disbursement Voucher.

Transfer, registration and coupon department billing.—Similar records are maintained for other fiduciary departments, except that the information for the purpose of billing is obtained from the appropriate records of the respective departments. In the case of transfers or registrations, the bills are rendered periodically, usually semiannually, the minimum annual charge being included in the first bill of each yearly period, and the charge for additional certificates being included in the second bill.

For the purpose of keeping track of the number of certificates issued by the transfer department, Form 91 is used. A sheet is opened for each account, or for each class of stock, if there is more than one. The daily totals of certificates issued are entered on these sheets and, when bills are being prepared, the total shown on each sheet is proved against the number of certificates used as indicated on the transfer



Jan.	Certificates Issued	Feb.	Certificates Issued	Mar.	Certificates Issued	Apr.	Certificates Issued	May	Certificates Issued	June	Certificates Issued	July	Certificates Issued	Aug.	Certificates Issued	Sept.	Certificates Issued	Oct.	Certificates Issued	Nov.	Certificates Issued	Dec.	Certificates Issued
1		1		1		1		1		1		1		1		1		1		1		1	
2		2		2		2		2		2		2		2		2		2		2		2	
3		3		3		3		3		3		3		3		3		3		3		3	
4		4		4		4		4		4		4		4		4		4		4		4	
5		5		5		5		5		5		5		5		5		5		5		5	
6		6		6		6		6		6		6		6		6		6		6		6	
7		7		7		7		7		7		7		7		7		7		7		7	
8		8		8		8		8		8		8		8		8		8		8		8	
9		9		9		9		9		9		9		9		9		9		9		9	
10		10		10		10		10		10		10		10		10		10		10		10	
11		11		11		11		11		11		11		11		11		11		11		11	
12		12		12		12		12		12		12		12		12		12		12		12	
13		13		13		13		13		13		13		13		13		13		13		13	
14		14		14		14		14		14		14		14		14		14		14		14	
15		15		15		15		15		15		15		15		15		15		15		15	
16		16		16		16		16		16		16		16		16		16		16		16	
17		17		17		17		17		17		17		17		17		17		17		17	
18		18		18		18		18		18		18		18		18		18		18		18	
19		19		19		19		19		19		19		19		19		19		19		19	
20		20		20		20		20		20		20		20		20		20		20		20	
21		21		21		21		21		21		21		21		21		21		21		21	
22		22		22		22		22		22		22		22		22		22		22		22	
23		23		23		23		23		23		23		23		23		23		23		23	
24		24		24		24		24		24		24		24		24		24		24		24	
25		25		25		25		25		25		25		25		25		25		25		25	
26		26		26		26		26		26		26		26		26		26		26		26	
27		27		27		27		27		27		27		27		27		27		27		27	
28		28		28		28		28		28		28		28		28		28		28		28	
29		29		29		29		29		29		29		29		29		29		29		29	
30		30		30		30		30		30		30		30		30		30		30		30	
31		31		31		31		31		31		31		31		31		31		31		31	

Form 91.—Stock Certificates Issued Sheet.

record by the first and last certificate number for the period covered, less certificates spoiled by errors in preparation. A similar record is kept by the registration department. Entries

as to the stockholders' lists are made as the lists are supplied and the information necessary for bills as dividend disbursing agent is obtained from the dividend payment lists. The coupon department also renders bills periodically, based on the amount of funds received to pay each coupon maturity. Care must be exercised not to bill corporations for the payment of coupons if the department has received free use of the funds for 30 days or such other period as may be specified in its arrangement with its principal.

Disbursements.—It should be noted that expenses of the trust company, such as postage and registered mail insurance (except when collected from the addressee), telegrams, counsel fees, and so on, are chargeable to the company on whose behalf the expenses are incurred. In transfer and registration work the cost of sheets, binders, etc., are also charged against the principal, on the theory that they are the property of the principal and are merely in the custody of the agent who, at some future date, may be called upon to turn them over to another agent. Some satisfactory arrangement should be worked out between the fiduciary departments and the various service groups, purchasing, and other departments where these charges originate, so that all of these expenses eventually will be billed against the respective companies.

BIBLIOGRAPHY

Campbell, H. Brua, "Legal Aspects of the Transfer of Securities." Doubleday Page & Co.

Chamberlain, Lawrence, "Principles of Bond Investment." Henry Holt & Co.

Cushing, Harry A., "Voting Trusts." The Macmillan Co.

Dewing, Arthur S., "The Financial Policy of Corporations" (Volume I). Ronald Press.

Duncan, Kenneth, "Equipment Obligations." D. Appleton & Co.

Gerstenberg, C. W., "Financial Organization and Management of Business." Prentice-Hall, Inc.

Herrick, Clay, "Trust Departments in Banks and Trust Companies." McGraw-Hill Book Co., Inc.

Jordan, D. F., "Investments." Prentice-Hall, Inc.

Lagerquist, W. E., "Investment Analysis." The Macmillan Co.

Lanier, H. W., "A Century of Banking in New York, 1822-1922." George H. Doran Co.

Lilly, William, "Individual and Corporation Mortgages." Doubleday, Page & Co.

Maraspin, F. L., and Driver, H. B., "Fundamental Principles of Stock Transfers." Boston Chapter, American Institute of Banking.

Stetson, Byrne, Cravath, and others, "Some Legal Phases of Corporate Financing, Reorganization, and Regulation," including

(a) Francis Lynde Stetson, "Preparation of Corporate Bonds, Mortgages, Collateral Trusts and Debenture Indentures."

(b) James Byrne, "The Foreclosure of Railroad Mortgages in the United States Courts."

(c) Paul D. Cravath, "The Reorganization of Corporations; Bondholders' and Stockholders' Protective Committee; Reorganization Committees; and the Voluntary Recapitalization of Corporations."

The Macmillan Co.

Walker, Roberts, "The Modern Corporate Mortgage," a Lecture delivered at Princeton University. Reprinted by New York Chapter, Inc., American Institute of Banking.

APPENDICES

APPENDICES

APPENDIX I

Form of Corporate Mortgage

CONTENTS OF APPENDIX I

PAGE

Parties 333
Authorization of indenture and issue of bonds 333
Form of coupon bonds 334
Form of coupon 335
Form of registered bond without coupons 335
Form of Trustee's certificate 337
Compliance with laws 337
Granting clause 337
Habendum 339
Grant in trust 339
Proviso for defeasance 339
If money deposited to pay bonds is not claimed within six years ... 340

Article First.

Form, Execution, Delivery, Registry and Exchange of Bonds.

Section 1. Bonds issuable in series 340
Designation and terms of bonds of Series A 340
Section 2. Designation and terms of bonds of other series 340
Section 3. Forms of bonds and coupons 341
Execution, authentication and delivery of bonds 341
Effect of Trustee's certificate 341
Signatures of former officers to continue valid 341
Signature on coupons 341
Trustee to receive copy of resolution creating any series 342
Date from which interest is to accrue 342
Bonds may be with or without coupons 342
Section 4. Denominations, etc., of coupon bonds 342
Denominations of bonds without coupons 342
Section 5. Registration and transfer books 342
Registration of coupon bonds 342
Transfer of registered coupon bonds 342
Negotiability of coupons 343
Exchange of coupon bonds for coupon bonds of other denominations 343
Transfer of registered bonds without coupons 343
Exchange of registered bonds without coupons for coupon bonds 343

PAGE

Exchange of coupon bonds for registered bonds without coupons 343
Legends on and provisions in coupon and registered bonds 344
Charges for transfers and exchanges 344
Cancellation of surrendered bonds 344
Section 6. Who to be deemed owners of coupon bonds 344
—of coupons 344
—of bonds without coupons 344
—of registered coupon bonds 344
Section 7. Replacing bonds mutilated, destroyed or lost 344
Charges for issuing substitute bonds 345
Section 8. Temporary bonds 345
Exchange of temporary bonds for definitive bonds .. 345
Bonds may be authenticated before recording of mortgage 345

Article Second.

Issue of Bonds.

Section 1. General power to issue bonds from time to time 345
Section 2. Immediate issue of Series A 346
Section 3. Issue of bonds to refund, etc., bonds of other series .. 347
Conditions of issue without deposit of cash 347
Conditions of issue with deposit of cash 347
Cancellation and return of bonds and coupons 348
Section 4. Issue of bonds to retire underlying bonds 348
Issue of bonds against cash to retire underlying bonds 349
Resolutions, etc., to be delivered to Trustee 349
Disposition of underlying bonds upon retirement .. 349
Until default no interest to be paid 349
Upon payment of all underlying bonds of any issue, mortgage securing the same shall be discharged.. 350
Section 5. Future issues of bonds on account of additional property 350
Issue of bonds upon deposit of cash 351
Net earnings in excess of interest requirements 351
Copies of resolutions to be furnished to Trustee 351
Certificates to be furnished to Trustee 351
Provisions as to real estate 352
By whom certificates shall be signed 352
Authentication of bonds upon receipt of certificates, etc. 353

PAGE

Section 6. No bonds authenticated if Telephone Company is in default 353
Section 7. Trustee may rely on resolutions, certificates, etc. 353
—may make an independent investigation 353
—at the expense of the Telephone Company 354

Article Third.

Concerning Securities of Other Corporations.

Section 1. Securities subject to lien of indenture to be deposited with Trustee 354
Trustee may preserve existence of company whose stock is pledged 354
—may qualify directors 354
Section 2. Until default Telephone Company is to receive dividends and interest 354
Telephone Company not entitled to principal of pledged securities 355
—nor to capital distributions 355
—nor to stock dividends 355
—nor to cash dividends on liquidation 355
All coupons and indebtedness to be subject to mortgage until paid 355
Any such moneys to be paid to Trustee 356
Application of moneys paid to Trustee 356
Section 3. Until default Company may vote pledged stock 356
—trustee to give proxies 356
—limitations on voting power 356
—exceptions 356
—current obligations 356
—purchase money mortgage 357
Pledged bonds may be refunded 357
Refunding bonds to be pledged hereunder 357
Section 4. Trustee may purchase at sale property of corporations whose securities are pledged 357
Section 5. Trustee may join in reorganization of corporation whose securities are pledged 358
Section 6. Telephone Company will pay Trustee's expenses under Secs. 4 and 5 358

Article Fourth.

Sinking Fund.

Section 1. Sinking fund for Series A 358
Section 2. Sinking funds for other series 359

Article Fifth.

Redemption of Bonds.

		PAGE
Section 1.	Redemption of Series A	359
	Redemption provisions to be expressed in bonds	359
	Redemption dates	360
	Publication of notice	360
	—stating numbers of bonds to be redeemed	360
	—notice to be mailed to holders of registered bonds	360
	Bonds drawn by lot if only part of a series redeemed	360
	Holder of bond without coupons to receive a new bond for the amount unredeemed	361
	No interest to accrue after redemption date	361
Section 2.	Trust to terminate on deposit of cash necessary to redeem all bonds	361
Section 3.	Redeemed bonds to be cancelled	362

Article Sixth.

Particular Covenants of the Telephone Company.

Section 1.	Covenant, to pay principal and interest	362
	Covenant not to extend or refund coupons	362
Section 2.	Covenant to keep Manhattan office	362
Section 3.	Covenant to give further assurances	362
Section 4.	Covenant as to title	363
Section 5.	Covenant not to create prior liens	363
	—not to issue more underlying bonds	363
	—not to extend underlying bonds	363
	—to pay interest thereon when due	363
Section 6.	Covenant to pay taxes, etc.	363
Section 7.	Covenant not to permit lien hereof to be impaired	364
	—to keep mortgaged property in good order	364
	—to make renewals	364
Section 8.	Covenant to insure property or adopt other method of protection	364
	To pay proceeds to Trustee	364
Section 9.	Covenant to keep records of sales, etc., of bonds	365
Section 10.	Covenant not to issue bonds except in accordance with mortgage	365
Section 11.	Covenant to record, pay fees, etc.	365

Article Seventh.

Consolidation, Merger and Purchase.

Section 1.	Consolidation, etc., not prohibited	365
	—provided successor assumes payment of bonds	366

PAGE

Section 2. Successor, upon executing an indenture 366
—may issue bonds hereunder 366
Appropriate changes in phraseology of bonds to be made 367
Trustee may rely on opinion of counsel 367
Section 3. Consolidation, etc., of company whose stock is pledged —if with Telephone Company, stock to be surrendered by Trustee 367
—also the bonds of such company 367
Section 4. Term "Telephone Company" includes any successor . 368

Article Eighth.

Concerning the Property Mortgaged.

Section 1. Telephone Company to possess and operate mortgaged property until default 368
Section 2. Disposal, etc., of mortgaged property without release.. 368
Section 3. Releases of real estate 369
Section 4. Releases of other property 370
Section 5. Prior mortgages 371
Section 6. Exchange of stock, bonds, etc. 371
Section 7. Transfer of franchise. Liabilities of purchasers 371
Section 8. Exercise of powers by receiver or Trustee 372

Article Ninth.

Remedies of the Trustee and Bondholders.

Section 1. Subordination of lien of coupons or claims for interest funded or extended 372
Section 2. Events of default 372
Upon default Trustee may enter 373
—and operate 373
Application of income 374
—if principal not due 374
—if principal due 374
Section 3. Upon default Trustee may vote pledged stock and collect dividends and interest 374
Section 4. Upon default principal may be declared due 375
Bondholders may waive default 375
Restoration of parties to former position 375
Section 5. Upon default Trustee may sell mortgaged property .. 376
Or may commence judicial proceedings 376

PAGE

Section 6. Notice of sale 377
Section 7. Adjournment of sale 377
Section 8. Vesting title in purchaser 377
Sale to divest all interest of Telephone Company 377
Purchaser's acquittance on payment 378
Section 9. Principal due on sale 378
Section 10. Application of proceeds of sale 378
—to payment of costs, expenses, etc. 378
—to payment of principal and interest 378
—surplus to Telephone Company 379
Section 11. Purchaser may apply bonds and matured coupons on purchase price 379
Section 12. Waiver of stay or extension laws 379
Section 13. Covenant to pay principal and interest on default 379
Upon failure to pay, Trustee entitled to judgment .. 380
Application of moneys collected by Trustee 380
Section 14. Upon institution of judicial proceedings Trustee may enter 381
—and may have receiver appointed 381
Section 15. Bondholders not to sue until application made to Trustee 381
—nor until Trustee is indemnified 381
Trustee to act for equal benefit of all bondholders.. 381
Section 16. Remedies are cumulative 382
Section 17. No rights impaired by Trustee's delay 382
Section 18. Trustee may institute suits to prevent impairment of lien 382
Section 19. Majority of any series may take action on default 382
Section 20. No liability of stockholders, etc. 383
Obligations of Telephone Company only 383

Article Tenth.

Evidence of Rights of Bondholders.

Section 1. Instruments may be executed in concurrent writings.. 383
Section 2. Proof of execution 383
Section 3. Proof of ownership of unregistered bonds 384
—of registered bonds 384

Article Eleventh.

Concerning the Trustee.

		PAGE
Section 1.	Trustee accepts trusts on conditions	384
	—not required to record mortgage	384
	—entitled to compensation and indemnity and prior lien therefor	384
	—protected in acting upon instrument believed genuine	385
	—not answerable for acts of agents	385
	—not required to act on default until notified and indemnified	385
	—may require submission of bonds	385
	—may take opinion of counsel	386
	—may employ agents, attorneys, etc.	386
	—need not see to insurance or payment of taxes	386
	—moneys received to bear interest	386
	—recitals made by Telephone Company alone	386
	—not responsible for validity or sufficiency of security	386
	—may be bondholder	386
	—not responsible for debts, etc.	386
	—may rely on certificate of officers of Telephone Company	387
Section 2.	Trustee may resign	387
	—may be removed by bondholders	387
Section 3.	Appointment of successor	387
	—by bondholders	387
	—by Telephone Company	387
	—publication of notice of appointment	387
	Successor to be a trust company	388
Section 4.	Successor by merger or consolidation	388

Article Twelfth.

Supplemental Indentures.

Section 1.	Provision for supplemental indentures	389
	—to convey additional property	389
	—to state indebtedness of companies hereafter merged	389
	—to add limitations	389
	—to evidence succession to Telephone Company	389
	—to make provision as to questions arising hereunder.	389
Section 2.	Trustee authorized to join in execution	389

Article Thirteenth.

Miscellaneous Provisions.

PAGE

Section 1. All covenants inure to successors of Telephone Company 389
Section 2. No rights hereunder except to Telephone Company Trustee and bondholders 390
Section 3. Execution in counterparts 390
Section 4. Marginal notes 390
Section 5. Attorney to acknowledge indenture for Telephone Company 390
Section 6. Attorney to acknowledge indenture for Trustee 390
Testimonium 390
Signatures 391
Acknowledgments 391

THE TELEPHONE COMPANY OF AMERICA

to NATIONAL TRUST COMPANY, Trustee

FIRST AND REFUNDING MORTGAGE

Dated, October 1, 1925

This Indenture, dated the first day of October, 1925, but executed on the date recited at the end hereof, made by and between

THE TELEPHONE COMPANY OF AMERICA, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called the "Telephone Company"), party of the first part, and NATIONAL TRUST COMPANY, a corporation duly organized and existing under the laws of the State of New York (hereinafter called the "Trustee"), party of the second part, WITNESSETH:

WHEREAS, the Telephone Company is authorized by law to borrow money, and to secure the payment of the same by mortgage on its property, real, personal, and mixed, and has, by votes of its Board of Directors and its stockholders, at meetings duly called and held in accordance with law, authorized the execution of this indenture, and the immediate issue thereunder of bonds, of the aggregate principal amount of twenty-five million dollars ($25,000,000), to be designated "Twenty-Five Year First and Refunding Mortgage 5% Sinking Fund Gold Bonds Series A"; and

WHEREAS, subject to the provisions of Article First hereof, the text of the bonds (which may be issued in series and may be coupon bonds or registered bonds without coupons), and of the coupons to be attached to such thereof as may be coupon bonds, is to be substantially in the following form (the blanks to be appropriately filled), provided that, in the case of bonds issued hereunder, which shall be secured by a sinking fund or which shall be made redeemable before maturity, or convertible into capital stock, or in respect of which there are other covenants and provisions permitted by this indenture, there are to be inserted in such bonds paragraphs stating briefly such sinking fund provisions, reserved right of redemption, right of conversion, or other covenants or provisions, and in such coupons, appropriate phraseology; and such bonds are to have inserted therein such provisions as to exchangeability, and are to bear such legends or indorsements as may be

required by the rules of the New York Stock Exchange or to conform to usage:

(Form of Coupon Bond)[1]

No. — Series — —% No. —

United States of America
Commonwealth of Pennsylvania.

THE TELEPHONE COMPANY OF AMERICA

FIRST AND REFUNDING MORTGAGE GOLD BOND,

Due ——

THE TELEPHONE COMPANY OF AMERICA (hereinafter called the "Telephone Company"), a corporation of the Commonwealth of Pennsylvania, for value received, hereby promises to pay to bearer, or, if this bond be registered, to the registered holder thereof, on the day of , at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, Dollars in gold coin of the United States of America of or equivalent to the standard of weight and fineness existing on October 1, 1925, and to pay interest thereon from the date hereof at the rate of per cent (%) per annum, such interest to be payable at such office or agency, in like gold coin, semiannually, on the day of , and the day of in each year until the payment of said principal sum, but only upon the presentation and surrender of the interest coupons hereto annexed as they severally mature.

This bond is one of a duly authorized issue of First and Refunding Mortgage Gold Bonds of the Telephone Company, issued and to be issued under, and all equally secured by an indenture of trust, dated October 1, 1925, duly executed and delivered by the Telephone Company to National Trust Company, a corporation of the State of New York, as Trustee, to which indenture reference is hereby made for a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds and of the Trustee in respect of such security, and the terms and conditions under which the bonds are issued and secured. As provided in said indenture, said bonds may be for various principal sums and are issuable in series, which different series may mature at different times, may bear interest at different rates and may otherwise vary as in said indenture provided. Series bonds, of which this is one, are known as the First and Refunding Mortgage Gold Bonds Series of the Telephone Company and are limited in the aggregate principal amount of $, at any one time outstanding.

In case an event of default, as defined in the said indenture, shall occur, the principal of this bond may become and be declared due and payable in the manner and with the effect provided in said indenture.

This bond shall pass by delivery unless registered as to the principal thereof in the holders name at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, such registry being noted on the bond by the agent for such purpose of the Telephone Company, after which no transfer shall be valid unless made at said office or agency by the registered holder in person or by his attorney duly authorized in writing, and similarly noted on the bond; but thereafter it may be discharged from registry by being

[1] This is a skeleton form. For the form of Series "A" bond see page 79.

transferred in like manner to bearer, and thereupon transferability by delivery shall be restored, and may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons hereto annexed, which shall continue to be payable to bearer and transferable by delivery merely, and the payment thereof to bearer shall fully discharge the Telephone Company in respect of the interest therein mentioned, whether or not this bond be registered.

No recourse shall be had for the payment of the principal of or the interest upon this bond, or for any claim based thereon, or in respect thereof, or of said indenture, against any incorporator, stockholder, officer or director of the Telephone Company, either directly or through the Telephone Company or through a receiver or trustee, whether by virtue of any statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly released.

This bond shall not become valid or obligatory for any purpose until it shall have been authenticated by the execution of the certificate, hereon indorsed, by the Trustee under said indenture.

In Witness Whereof, The Telephone Company of America has caused these presents to be signed by its President or Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, and coupons for said interest bearing the engraved *facsimile* signature of its Treasurer to be attached hereto in the City of New York. Dated the day of

THE TELEPHONE COMPANY OF AMERICA

By _____

Vice President.

Attest:

_____

Secretary.

(Form of Interest Coupon)

No. — $ —

On the day of , , THE TELEPHONE COMPANY OF AMERICA will pay to bearer at its office or agency in the Borough of Manhattan, City of New York, Dollars in gold coin of the United States, being six months' interest then due on its First and Refunding Mortgage Gold Bond No. , Series .

_____,

Treasurer.

(Form of Registered Bond Without Coupons)

No. — Series — — % No. —

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
THE TELEPHONE COMPANY OF AMERICA
FIRST AND REFUNDING MORTGAGE GOLD BONDS,
Due ——

THE TELEPHONE COMPANY OF AMERICA, (hereinafter called the "Telephone Company") a corporation of the Commonwealth of Pennsylvania, for value received, hereby promises to pay to or registered assigns, on the day of , at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, dollars in gold coin of the United

States of America of or equivalent to the standard of weight and fineness existing on October 1, 1925, and to pay interest thereon at the rate of per cent (%) per annum from the day of , 19 ; such interest to be payable to the registered holder hereof at such office or agency in like gold coin semiannually on the day of and on the day of in each year until the payment of said principal sum.

This bond is one of a duly authorized issue of First and Refunding Mortgage Gold Bonds of the Telephone Company issued and to be issued under, and all equally secured by, an indenture of trust, dated October 1, 1925, duly executed and delivered by the Telephone Company to National Trust Company, a corporation of the State of New York, as Trustee, to which indenture reference is hereby made for a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds and of the Trustee in respect of such security, and the terms and conditions under which the bonds are issued and secured. As provided in said indenture, said bonds may be for various principal sums and are issuable in series, which different series may mature at different times, may bear interest at different rates, and may otherwise vary as in said indenture provided. Series bonds, of which this is one, are known as the First and Refunding Mortgage Gold Bonds Series of the Telephone Company and are limited in the aggregate principal amount of $ at any one time outstanding.

In case an event of default, as defined in the said indenture, shall occur, the principal of this bond may become and be declared due and payable in the manner and with the effect provided in said indenture.

This bond is transferable by the registered holder hereof in person or by attorney duly authorized in writing, at the office or agency of the Telephone Company in the Borough of Manhattan, City of New York, upon surrender and cancellation of this bond, and upon any such transfer a new registered bond without coupons, of the same series, for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

No recourse shall be had for the payment of the principal of or the interest upon this bond, or for any claim based thereon, or in respect thereof, or of said indenture, against any incorporator, stockholder, officer or director of the Telephone Company, either directly or through the Telephone Company or through a receiver or trustee, whether by virtue of any statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly released.

This bond shall not become valid or obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon indorsed, by the Trustee under said indenture.

In Witness Whereof, The Telephone Company of America has caused these presents to be signed by its President or Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary in the City of New York.

Dated the day of

THE TELEPHONE COMPANY OF AMERICA

By _____
Vice President.

Attest:

_____
Secretary

And Whereas, on each of said coupon bonds and on each of said registered bonds without coupons, there is to be endorsed a certificate of the Trustee in the following form, to wit:

(Form of Trustee's Certificate)

This bond is one of the bonds, of the series designated therein, described in the within mentioned indenture.

National Trust Company,
Trustee,

By _____
Asst. Secretary.

And Whereas, all acts and things necessary to make said bonds when executed by the Telephone Company and authenticated by the Trustee, as in this indenture provided, valid, binding and legal obligations of the Telephone Company and this indenture a valid mortgage or deed of trust to secure the payment of said bonds, have been performed, and the execution of this indenture has been in all respects duly authorized:

Now, therefore, in order to secure the payment of the principal and interest of all bonds issued and to be issued under this indenture, according to their tenor and effect and the terms of this indenture, and the performance of the covenants and obligations herein contained, and in consideration of the acceptance by the Trustee of the trusts hereby created, of the purchase and acceptance of the said bonds by the holders thereof, and of one dollar in hand paid by the Trustee to the Telephone Company, upon the execution and delivery of this indenture, receipt whereof is hereby acknowledged, the Telephone Company has granted, bargained, sold, conveyed, released, confirmed, pledged, assigned, transferred and set over, and by these presents does grant, bargain, sell, convey, release, confirm, pledge, assign, transfer and set over unto National Trust Company, as Trustee, and to its successors in said Trust and its and their assigns forever, subject to the terms of this indenture, all and singular the following described property, rights, privileges and franchises of the Telephone Company, viz.:

Any and all real estate which the Telephone Company now owns, or in which it has any interest, to be more fully described in a supplemental indenture to be executed by the Telephone Company to the Trustee, or which it may hereafter acquire, in the Commonwealth of Pennsylvania.

Together with all plants, buildings, structures, improvements, and machinery located upon said real estate or any portion thereof, and all rights, privileges, and easements of every kind and nature appurtenant thereto, and all and singular the tenements, hereditaments, and appurtenances belonging to the real estate or any part thereof hereinbefore described or referred to or intended so to be, or in any wise

appertaining thereto, and the reversions, remainders, rents, issues and profits thereof; also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the Telephone Company, of, in and to the same and any and every part thereof, with the appurtenances.

Also all buildings, plants, systems, works, improvements, structures, fixtures, appliances, machinery, materials, supplies, tools, implements, office furniture, telephone and telegraph lines, switchboards, wires, cables, poles, conductors, subways, conduits, stations, sub-stations, equipment (central office, subscribers' stations and general), instruments, house wiring connections, and all appliances, apparatus, fixtures, fittings and equipment of every nature and kind whatsoever, appertaining to or useful in the transaction of the telephone or telegraph business in the Commonwealth of Pennsylvania, which the Telephone Company now owns or in which it has any interest, or which it may hereafter acquire, in said Commonwealth.

Also all rights of way, franchises, ordinances, privileges, immunities, consents, permissions, leases, patents, patent-rights, licenses, license agreements and other rights, privileges, contracts and agreements appertaining to or useful in the transaction of the telephone or telegraph business in the Commonwealth of Pennsylvania, which the Telephone Company now owns or in which it has any interest, or which it may hereafter acquire, in said Commonwealth.

Also any stocks, bonds, or other obligations of other corporations which the Telephone Company may hereafter deposit with the Trustee (accompanied in the case of certificates of stock and of bonds if registered, by irrevocable powers of attorney sufficient to enable the Trustee to make transfers thereof), as provided in Article Third of this indenture.

Also all other property, real and personal, which the Telephone Company now owns or in which it has any interest, or which it may hereafter acquire, in the Commonwealth of Pennsylvania, of whatever kind or description appertaining to or useful in the transaction of the telephone or telegraph business in said Commonwealth.

Also all tolls, incomes, rents, issues, profits, benefits and advantages to be derived, received or had, of and from the property hereby mortgaged or pledged or intended so to be, which the Telephone Company now owns, or in which it has any interest, or which it may hereafter acquire, in the Commonwealth of Pennsylvania.

It is the intention and it is hereby agreed that all property of the kind hereinbefore described, in the Commonwealth of Pennsylvania, acquired by the Telephone Company after the date hereof, shall be as fully embraced within the provisions of this indenture, and subject to the lien hereby created, as if the said property were now owned by the Telephone Company, and were specifically described herein and conveyed hereby:

Provided, nevertheless, that no stocks, bonds, or other obligations of other corporations, shall be or become subject to the lien of this indenture, unless the same shall be deposited with the Trustee by the Telephone Company as provided in this indenture.[2]

Certain of said property, rights, privileges, and franchises, are conveyed subject to the lien of the following mortgage:

THE HOME DISTRICT TELEPHONE COMPANY to CITY TRUST COMPANY, Trustee, dated November 29, 1918, under which First Mortgage 5% Gold Bonds, due December 1, 1948, of an aggregate face value of $9,543,000 are outstanding.

TO HAVE AND TO HOLD all and singular the property, rights, privileges and franchises hereby conveyed and assigned, or intended so to be, together with all and singular the reversions, remainders, revenues, incomes, issues and profits, privileges and appurtenances, now or hereafter belonging or in anywise appertaining thereto, unto the Trustee and its successors in the trust hereby created and its and their assigns, forever.

BUT IN TRUST NEVERTHELESS for the equal pro-rata benefit and security of each and every the persons and corporations who may be or become the holders of the bonds and coupons hereby secured, without preference, priority or distinction, except as provided in Section 1 of Article Ninth hereof, as to the lien or otherwise of one bond over or from the others by reason of priority in the issue or negotiation thereof, or by reason of the date of maturity thereof; so that each and all of said bonds shall have the same right, lien and privilege under this indenture and shall be equally secured hereby, with the same effect as if the same had all been made, issued and negotiated simultaneously on the date hereof; *provided, nevertheless,* and these presents are upon the express condition, that, if the Telephone Company, its successors or assigns, shall well and truly pay or cause to be paid the principal of said bonds, with interest and premium if any, according to the true intent and meaning of the said bonds and each of them, or shall provide for the payment of such bonds and interest and premium, if any, by depositing with the Trustee the entire amount due thereon, and shall also pay or cause to be paid all other sums payable hereunder by the Telephone Company, then this grant and mortgage shall become void, and the Trustee or its successors in the trust, on payment of all lawful charges and disbursements then unpaid, on demand of the Telephone Company shall execute, acknowledge and deliver to the Telephone Company such instrument of satisfaction or other deed of release or conveyance as may be necessary or proper to discharge this indenture of record, and shall grant, reassign and deliver to the Telephone Company, its successors or assigns, all and singular the

---

[2] A detailed description of the properties was included in a separate indenture (see Article Sixth, Section 3, page 362).

property, rights, privileges and franchises hereby granted, conveyed and assigned and not previously disposed of as herein provided, otherwise this grant and mortgage shall be and remain in full force.

In case the owner of any outstanding bonds and unpaid coupons shall not, within six years after such deposit, claim the amount deposited as above stated for payment thereof, the Trustee shall, upon demand, pay over to the Telephone Company such amount so deposited and the Trustee shall thereupon be relieved from all responsibility to the holder or holders of any such bonds.

THIS INDENTURE FURTHER WITNESSETH, that the Telephone Company has agreed and covenanted, and hereby does agree and covenant with the Trustee and with the respective holders from time to time of said bonds or coupons, or any thereof, as follows, that is to say:

ARTICLE FIRST

Form, Execution, Delivery, Registry, and Exchange of Bonds

Section 1. Bonds may be issued in series. Bonds of each series shall be designated by a distinctive letter. All bonds of the same series shall be identical in tenor, except as to the denominations thereof, and except, in the case of registered bonds without coupons, as to the date specified therein from which interest is to accrue. All of the bonds of a particular series shall bear the same date. All bonds issued under this indenture shall mature not before October 1, 1950, and not later than October 1, 2025.

The bonds of Series A shall be designated "Twenty-Five Year First and Refunding Mortgage 5% Sinking Fund Gold Bonds Series A." All coupon bonds of Series A shall be dated October 1, 1925, and all bonds of Series A shall bear interest payable on April 1 and October 1 in each year at the rate of 5% per annum from such date, without deduction on account of any and all taxes imposed by the Commonwealth of Pennsylvania upon any such bond or upon the holder as a resident thereof, not in excess of four mills per annum on each dollar of the principal amount of such bond, and shall mature on October 1, 1950. They shall be redeemable at the option of the Telephone Company, upon the terms stated in Article Fifth hereof, and shall be secured by a sinking fund, as provided in Article Fourth hereof.

Section 2. The bonds of each series, other than Series A, shall be designated in such appropriate manner as shall be determined by vote of the Board of Directors of the Telephone Company. The terms of the bonds of each series, other than Series A, including the maximum principal amount of bonds which may be issued in the series, date of the bonds, date of maturity, rate of interest, semi-annual interest payment dates, exchangeability, provisions relating to conversion into the

capital stock of the Telephone Company, or of a successor corporation, to a sinking fund, to redemption and to payment without deduction for certain taxes shall be such, not inconsistent with the terms of this indenture, as may be fixed by the Board of Directors of the Telephone Company and as shall be expressed in said bonds.

Section 3. Bonds of all series, and the coupons to be attached to coupon bonds, shall be substantially in the forms hereinbefore set forth, with such omissions, variations or insertions as may be necessary or appropriate to make them conform to provisions authorized in respect of the bonds of any series by the Board of Directors of the Telephone Company and permitted by this indenture.

All bonds issued under this indenture shall, from time to time, be executed on behalf of the Telephone Company by its President, or a Vice-President, under its corporate seal attested by its Secretary or an Assistant Secretary, and shall be delivered to the Trustee for authentication by it; and thereupon, as provided in this indenture and not otherwise, the Trustee shall authenticate and shall deliver the same. Only such bonds as shall bear thereon endorsed a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee, shall be secured by this indenture or be entitled to any right or benefit hereunder, and such authentication by the Trustee upon any such bond shall be conclusive evidence that the bond so authenticated, when issued by the Telephone Company, has been duly issued hereunder and that the holder thereof is entitled to the benefit of the trusts hereby created.

In case any of the officers of the Telephone Company who shall have signed and sealed any of the bonds issuable under this indenture shall have ceased to be officers of the Telephone Company before the bonds so signed and sealed shall have been actually authenticated and delivered by the Trustee, such bonds, nevertheless, may be authenticated and delivered and issued as though the persons who signed and sealed such bonds had not ceased to be officers of the Telephone Company; and also any of such bonds may be signed and sealed in behalf of the Telephone Company by such persons as at the actual date of the execution of such bonds shall be the proper officers of the Telephone Company, although at the date of such bond any such person shall not have been an officer of the Telephone Company. The coupons to be attached to coupon bonds shall be authenticated by the engraved *facsimile* signature of the present Treasurer or of any future Treasurer of the Telephone Company, and the Telephone Company may adopt and use for that purpose the *facsimile* signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually authenticated and delivered.

Article First, Sections 4 and 5.

Before bonds of any series shall be authenticated or delivered by the Trustee, a copy of the resolution of the Board of Directors of the Telephone Company, certified under its corporate seal by its Secretary or Assistant Secretary, authorizing or creating such series, shall be delivered to the Trustee, and the bonds of such series shall conform to the terms expressed in such resolution.

Coupon bonds shall bear interest from their date. Registered bonds without coupons shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication be an interest payment date, in which case such bonds shall bear interest from such interest payment date.

Bonds may be issued originally either as coupon bonds or as registered bonds without coupons. The Trustee shall not authenticate or deliver any coupon bond unless all coupons thereon then matured shall have been detached and cancelled.

Section 4. Coupon bonds of Series A shall be of the denominations of $1,000, $500, and $100. Coupon bonds of each other series shall be of such denominations as the Board of Directors of the Telephone Company may determine. Coupon bonds of the several denominations shall each be identified by a distinctive number and letter or letters, in accordance with such plan as may be adopted by the Telephone Company with the approval of the Trustee.

Registered bonds without coupons of Series A shall be of the denominations of $1,000, $5,000, and $10,000, and of other series, of such denominations as the Board of Directors of the Telephone Company shall determine.

Section 5. The Telephone Company shall keep at an office or agency to be maintained by it in the Borough of Manhattan, City of New York, books for the registry and transfer, as in this indenture provided, of bonds issued hereunder.

Any coupon bond may be registered as to principal only on the said books of the Telephone Company at its said office or agency and after such registration no transfer shall be valid unless made on said books by the registered holder in person, or by his attorney duly authorized, and similarly noted on the bond. Upon presentation to the Telephone Company at such office or agency of any such coupon bond registered as to principal, accompanied by a written instrument of transfer, in a form approved by the Telephone Company, executed by the registered holder, such bond shall be transferred upon such books. The registered holder of any such coupon bond, registered as to principal, shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such bond registered as payable to

bearer may be registered again in the name of the holder with the same effect as the first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired. Each registration of a bond shall be noted thereon by the agent for such purpose of the Telephone Company. Registration of any of the coupon bonds as to principal, however, shall not affect the negotiability of the coupons appertaining to such bond, but every such coupon shall continue to pass by delivery merely and shall remain payable to bearer.

Whenever any coupon bond or bonds of the same series, by the terms thereof exchangeable for coupon bonds of the same series of other denominations, together with all unmatured coupons thereto appertaining, shall be surrendered to the Telephone Company for exchange for a like principal amount of coupon bonds of other denominations of the same series, the Telephone Company shall execute, and the Trustee shall authenticate, and it or the Telephone Company shall deliver in exchange therefor a like aggregate principal amount of coupon bonds of the same series of such other denominations as shall be designated in the bonds so surrendered, bearing all unmatured coupons.

Whenever the registered holder of any registered bond without coupons shall surrender the same to the Telephone Company for transfer, together with a written instrument of transfer in form approved by the the Telephone Company duly executed by such registered holder, the Telephone Company shall execute, and the Trustee shall authenticate, and it or the Telephone Company shall deliver in exchange therefor a new registered bond without coupons, or new registered bonds without coupons, of the same series, for the same aggregate principal amount.

Whenever any registered bond without coupons, by the terms thereof exchangeable for a coupon bond or coupon bonds of the same series, together with a written instrument of transfer in form approved by the Telephone Company duly executed by the registered holder, shall be surrendered to the Telephone Company for exchange for one or more coupon bonds of the same series, the Telephone Company shall execute, and the Trustee shall authenticate, and it or the Telephone Company shall deliver in exchange therefor a like aggregate principal amount of coupon bonds of the same series as the surrendered bond, of such denominations as shall be designated in the bond so surrendered, bearing all unmatured coupons.

Whenever any coupon bond or bonds of the same series, by the terms thereof exchangeable for a registered bond or registered bonds without coupons, together with all unmatured coupons thereto appertaining, shall be surrendered for exchange for a registered bond or registered bonds without coupons, the Telephone Company shall execute, and the Trustee shall authenticate, and it or the Telephone Company shall deliver in exchange therefor a registered bond without coupons, or regis-

Article First, Sections 6 and 7.

tered bonds without coupons, of the same series, for the same aggregate principal amount.

Each coupon bond, and each registered bond without coupons, shall contain such provisions and bear such legends relating to exchangeability as may be required to comply with the rules of the New York Stock Exchange or to conform to usage.

For any exchange of bonds for bonds of another denomination, or of coupon bonds for registered bonds without coupons, or of registered bonds without coupons for coupon bonds, and for any transfer of registered bonds without coupons, the Telephone Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge, and in addition thereto of a further sum of not exceeding two dollars for each new bond, if any, issued upon such transfer or exchange. In every case of such transfer or exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and upon demand shall deliver the same to the Telephone Company.

Section 6. The Telephone Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured which shall not at the time be registered as hereinbefore provided, and the bearer of any coupons for interest on any bond, whether or not such bond shall be registered, as the absolute owner of such bond or coupons, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and neither the Telephone Company nor the Trustee shall be affected by any notice to the contrary.

The Telephone Company and the Trustee shall deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of or on account of the principal and interest on such bond and for all other purposes, and shall deem and treat the person in whose name any coupon bonds shall be so registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof, and for all other purposes except to receive payment of interest represented by outstanding coupons.

Section 7. In case any bond issued under this indenture shall become mutilated or be destroyed, lost or stolen, the Telephone Company in its discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new bond of like tenor, date and series bearing in the case of a coupon bond, the same coupons as the one mutilated, destroyed, lost or stolen, and in the case of a registered bond without coupons, having endorsed thereon the same serial number or numbers of coupon bonds as were endorsed upon the bond so mutilated, destroyed, lost or stolen. The applicant for such substitute bond shall furnish to the

Article First, Section 8; Article Second, Section 1.

Telephone Company and to the Trustee evidence to their satisfaction, respectively, of the mutilation, destruction, loss or theft of such bond, and said applicant also shall furnish such indemnity to both the Telephone Company and the Trustee, respectively, as in their discretion they may require. The Telephone Company may require the payment of all expenses of itself or of the trustee in connection with any such application, and of a sum not exceeding two dollars for each new bond issued under this Section.

Section 8. Until definitive bonds shall be prepared the Telephone Company may execute and upon the request of the Telephone Company the Trustee shall authenticate and deliver in lieu of such definitive bonds and subject to the same provisions, limitations and conditions, temporary printed bonds of any denomination substantially of the tenor of the bonds hereinbefore recited, with or without coupons and with appropriate omissions, insertions and variations as may be required. Pending the preparation of the definitive bonds, such temporary bonds shall be exchangeable for other temporary bonds of like aggregate principal amount, whether of the same or different denominations, in accordance with the provisions of this Article First.

Upon surrender of such temporary bonds, or any of them in exchange for definitive bonds, the Telephone Company, at its own expense, shall prepare and execute and, upon cancellation of such surrendered bonds, the Trustee shall authenticate and deliver in exchange therefor, definitive bonds for the same aggregate principal amount as the temporary bonds surrendered, and otherwise in accordance with said temporary bonds. Until so exchanged, the temporary bonds in all respects shall be entitled to the same lien and security of this indenture as the definitive bonds issued and authenticated hereunder, and interest, when and as payable, shall be paid and such payment noted thereon, if such temporary bonds shall have been issued without coupons, or, if such temporary bonds shall have been issued with coupons, shall be paid on presentation and surrender of such coupons as they mature.

On request of the Telephone Company bonds shall be authenticated and shall be delivered hereunder in advance of the recording of this indenture, but the Telephone Company with all convenient speed shall cause this indenture to be recorded as a mortgage in every county of the Commonwealth of Pennsylvania.

ARTICLE SECOND

Issue of Bonds.

Section 1. The Telephone Company may from time to time, subject only to the conditions prescribed in this Article Second, issue bonds secured by this indenture without limit as to principal amount; provided that no bonds shall be issued under this indenture which will make the

Article Second, Section 2.

total bonded debt of the Telephone Company then outstanding (including in the term "total bonded debt" bonds, if any, of The Home District Telephone Company and bonds created by others than the Telephone Company secured by lien upon the property of the Telephone Company, at the time outstanding, but excluding all bonds to be refunded, paid, redeemed, retired, purchased or otherwise acquired by the issue of bonds under this indenture,) exceed (a) the sum of the aggregate par value of the fully paid capital stock of the Telephone Company then outstanding, plus the amount of its surplus not specifically appropriated for any special purpose by vote of its Board of Directors or Executive Committee, or (b) the authorized indebtedness of the Telephone Company at the time. Such power to issue bonds shall not be exhausted by any issue, but may be exercised from time to time whenever the amount of bonds outstanding hereunder does not exceed the limits prescribed in this Article Second; and this indenture shall be a continuing lien to secure the payment of the principal and interest of all bonds which may from time to time be outstanding hereunder.

Whenever requesting the authentication of any bonds, except those of Series A, under this indenture, the Telephone Company shall furnish to the Trustee, in addition to other papers required by this Article Second, (a) an opinion of its counsel as to whether the consent or approval of any public service or public utility commission or other public authority is required by law for the issue of such bonds, (b) a certified copy of the order or other writing evidencing each such consent or approval as may be shown by said opinion to be required by law, (c) a certificate signed by its President or a Vice President and its Treasurer or an Assistant Treasurer that by the issue of said bonds the limits prescribed by this Section 1 of Article Second will not be exceeded, and setting forth in reasonable detail the amount of such capital stock, surplus and total bonded indebtedness, and (d) as long as any bonds of Series A are outstanding, a certificate signed by its President or a Vice President and its Treasurer or chief accounting officer, that the net earnings of the Telephone Company have been sufficient to comply with the terms of paragraph (2) of Section 5 of this Article Second; provided that for the purpose of determining whether such net earnings have been so sufficient, interest payable upon any bonds to be refunded, paid, redeemed, retired, purchased or otherwise acquired shall be excluded.

Section 2. The initial issue of bonds hereunder, designated as "Twenty-Five Year First and Refunding Mortgage 5% Sinking Fund Gold Bonds Series A," shall be limited to the aggregate principal amount of twenty-five million dollars ($25,000,000). The bonds of said Series A shall be forthwith executed by the Telephone Company and delivered to the Trustee, and the Trustee shall thereupon authenticate and deliver

said bonds to, or upon the written order of, the Telephone Company, and said bonds, or their proceeds, may be used by the Telephone Company without restriction imposed by this indenture.

Section 3. Additional bonds secured by this indenture may from time to time be issued hereunder, to refund, or retire, or replace, either before, at or after maturity, any bonds of Series A or any other bonds issued hereunder, upon compliance with the conditions prescribed in either paragraph (1) or (2) of this Section 3 of Article Second.

(1) Upon (a) delivery to the Trustee of any bonds issued hereunder, whether of the same or different series, canceled or uncanceled, with all unmatured coupons, if any, thereto appertaining, either in bearer form or accompanied by proper instruments of assignment and transfer, and/or (b) upon proof furnished to the Trustee, satisfactory to the Trustee, that any such bonds have been paid and satisfied in full, and/or (c) upon acquisition by the Trustee of any such bonds as a part of the sinking fund established therefor, except bonds of Series A or of any other series in respect of which the sinking fund provisions prohibit it, the Trustee shall, upon request of the Telephone Company, at any time or times thereafter, authenticate and deliver to, or upon the written order of, the Telephone Company, bonds of such other series as may be requested by the Telephone Company, equal in principal amount to the principal amount of the bonds so delivered to the Trustee, and/or of the bonds so proved to have been paid and satisfied, and/or of the bond so acquired for sinking fund purposes, as the case may be; provided that the Trustee shall have been furnished with a certified copy of a resolution of the Board of Directors of the Telephone Company, requesting the authentication and delivery of such bonds.

(2) Upon delivery to the Trustee (a) of a certified copy of a resolution of the Board of Directors of the Telephone Company, requesting the Trustee to authenticate and deliver to, or upon the written order of, the Telephone Company, bonds of a particular series, secured by this indenture, for the purpose of refunding at maturity any bonds, whether of the same or different series, issued hereunder, and/or for the purpose of redeeming any such bonds that shall have been called for redemption according to their terms, and (b) in the case of bonds called for redemption, also a certified copy of the resolution authorizing such call, the Trustee shall authenticate and deliver to, or upon the written order of, the Telephone Company, bonds of such other series as may be requested by it, equal in principal amount to the aggregate principal amount of the bonds to be refunded and/or redeemed; provided that cash equal to the principal amount of the bonds so authenticated and delivered shall simultaneously be deposited with the Trustee in exchange therefor. On the written order of the Telephone Company, and upon delivery to the Trustee from time to time of bonds so matured or matur-

Article Second, Section 4.

ing or so called for redemption (other than bonds in exchange for which the Trustee shall have authenticated and delivered bonds under paragraph (1) of this Section 3 of Article Second), canceled or uncanceled, with all unmatured coupons, if any, thereto appertaining, either in bearer form or accompanied by proper instruments of assignment and transfer, the Trustee, out of the cash so deposited with it, shall pay to the Telephone Company a sum equal to the principal amount of the bonds so delivered to the Trustee.

All bonds and coupons delivered to the Trustee under the provisions of this Section 3 of Article Second shall, if uncanceled, thereupon be canceled, and shall be stamped by the Trustee with a notation that the same have been refunded under this indenture, and returned to the Telephone Company. No bonds shall be subsequently issued hereunder in place of bonds that shall have been so refunded, stamped and returned.

Section 4. Additional bonds secured by this indenture may from time to time be issued hereunder either (a) to refund, pay, redeem, retire, purchase or otherwise acquire, before, at or after maturity, (1) any bonds of The Home District Telephone Company referred to in the granting clause of this indenture, and (2) any bonds or other obligations secured by mortgage or other lien upon any property which may hereafter be acquired by the Telephone Company and become subject to the lien of this indenture and which mortgage or other lien is prior to the lien of the bonds issued hereunder, or (b) to reimburse the Telephone Company for money expended for any of said purposes. All such bonds or other obligations are hereinafter referred to collectively as underlying bonds.

(1) Whenever, from time to time, the Telephone Company shall deposit with the Trustee before, at or after maturity, any of said underlying bonds, canceled or uncanceled, with all unmatured coupons, if any, thereto appertaining, either in bearer form or accompanied by proper instruments of assignment and transfer, or shall furnish to the Trustee evidence satisfactory to the Trustee that any such bonds, including those acquired for sinking fund purposes, have been paid and satisfied in full, the Trustee, upon request of the Telephone Company, evidenced by a certified copy of a resolution of its Board of Directors, shall authenticate and deliver to, or upon the written order of, the Telephone Company, bonds secured by this indenture of any series requested by it, of a principal amount equal to the principal amount of such bonds so delivered to the Trustee or/and of such bonds so proved to have been paid and satisfied.

(2) From time to time, before, at or after, the maturity of any of said underlying bonds, the Telephone Company may sell or otherwise dispose of bonds of any series secured by this indenture, in order to

provide, in whole or in part, the means to pay, redeem, purchase or otherwise acquire any part of such bonds then outstanding, and the Trustee shall thereupon authenticate and deliver to, or upon the written order of, the Telephone Company bonds of any series requested by it secured by this indenture of an aggregate principal amount equal to the aggregate principal amount of the bonds to be so paid, redeemed, purchased or otherwise acquired, provided that, in each case an amount of money equal to the aggregate principal amount of the bonds so to be paid, redeemed, purchased or otherwise acquired shall simultaneously with the delivery of said bonds secured hereby be deposited with the Trustee. Out of the money so deposited with the Trustee, it shall, upon demand of the Telephone Company, and upon the delivery to the Trustee, in bearer form, or accompanied by proper instruments of assignment and transfer, of any one or more of the bonds so paid, redeemed, purchased or otherwise acquired by the Telephone Company, pay to it or upon its written order, a sum equal to the principal amount of the bonds so delivered to the Trustee.

Whenever the Telephone Company shall request the authentication of bonds for any of such purposes, it shall deliver to the Trustee, in addition to said bonds or cash, a certified copy of a resolution of its Board of Directors, requesting the Trustee to authenticate and deliver to, or upon the written order of, the Telephone Company, a stated amount of said bonds to be sold or otherwise disposed of, for or in respect of the payment, purchase, redemption or acquisition of a stated number of underlying bonds, specifying such underlying bonds, and stating that said amount of bonds to be issued hereunder is required for such purpose.

(3) Every underlying bond which shall be deposited with the Trustee under the provisions of this Section 4 of Article Second shall be stamped by the Trustee substantially as follows: "Not negotiable. Held in trust for the purposes declared in the First and Refunding Mortgage of The Telephone Company of America, dated October 1, 1925," and shall be held by the Trustee as purchaser, without merger or extinguishment or impairment of lien, and if not previously canceled, then in uncanceled form, as part of the security for the bonds issued and to be issued under this indenture, unless and until disposed of as hereinafter in this paragraph (3) authorized and directed.

Until default of the character described in Section 2 of Article Ninth hereof, and its continuance for the period therein specified, neither the principal nor the interest of any underlying bonds at any time held by the Trustee shall be collected or shall be required to be paid, and the coupons thereto appertaining, as they mature, shall be canceled by the Trustee and delivered to the Telephone Company, except that if default be made in the payment of the interest and principal of any of the

Article Second, Section 5.

underlying bonds not held by the Trustee hereunder, the coupons appertaining to any such bonds of the same issue, held subject to the lien of this indenture, shall not after such default be canceled, and the Trustee may demand and enforce any sums due, whether for interest or as principal, on any such bonds or uncanceled coupons, or may take such other action as shall, in its judgment, be desirable or necessary, and in all respects such bond so held by the Trustee shall be enforceable equally and ratably with all other like bonds not so held by the Trustee. The Trustee shall be reimbursed by the Telephone Company, or from the trust estate, for all expenses by it properly incurred by reason of any such action taken, with interest, and the amount of such expenses and interest shall, until repaid, constitute a lien upon the mortgaged property prior to the lien of this indenture. If at any time all of the underlying bonds of any issue shall be deposited with the Trustee, or shall have been proved to the satisfaction of the Trustee to have been paid and satisfied in full, and there shall not be outstanding any mortgage or other lien, which is junior to the mortgage securing such deposited bonds and prior to the lien of this indenture, upon any part of the mortgaged property, then, the bonds of such issue then held by the Trustee shall be canceled by the Trustee and surrendered to the Telephone Company, and, in such case, the Telephone Company shall procure the satisfaction and discharge of the mortgage securing said canceled bonds. In case the Telephone Company shall fail or neglect to take such steps as may be necessary to procure the satisfaction and discharge of record of the mortgage securing said canceled bonds, the Trustee may take or cause to be taken, at the expense of the Telephone Company, such steps as in its opinion may be necessary to procure the satisfaction and discharge of record of the said mortgage.

Section 5. Additional bonds secured by this indenture may from time to time, within the limit prescribed by Section 1 of this Article Second, be issued hereunder, subject only to the following conditions:

(1) The aggregate principal amount of bonds which the Telephone Company shall be entitled to have authenticated under the provisions of this Section 5 of Article Second may equal, but shall not exceed, seventy-five per cent of the actual cash cost to the Telephone Company of additions to, or extensions of, or betterments and improvements of, the telephone plant and system hereby mortgaged made or acquired by the Telephone Company subsequent to the date of this indenture and subject to the lien hereof, plus seventy-five per cent of the actual cash cost to it of stock, bonds and other securities acquired by the Telephone Company subsequent to the date of this indenture, which represent interests in telephone properties and which shall be pledged with the Trustee subject to the lien of this indenture; provided that bonds shall not be authenticated under this Section 5 of Article Second

on account of stock, bonds or other securities, if thereupon more than 10 per cent of the reasonable value of the property subject to the lien of this indenture would consist of stock, bonds or other corporate obligations.

Such bonds may also be authenticated and delivered in advance of the acquisition of such property or securities, or the doing of such work, if, simultaneously with the delivery of such bonds, the Telephone Company shall deposit with the Trustee the cash proceeds of the bonds so authenticated and delivered. The moneys so deposited with the Trustee (hereinafter referred to as "deposited moneys") shall be held by the Trustee as a trust fund, subject to the lien of this indenture and as part of the trust estate, until they shall have been paid out from time to time as hereinafter provided in this Section 5 of Article Second.

(2) Bonds shall not be authenticated under the provisions of this Section 5 of Article Second if the net earnings of the Telephone Company, after providing for the payment of taxes, available for interest purposes, during the period of twelve consecutive calendar months ending not more than sixty days prior to such request for authentication, shall have been less than one and three-quarters times the interest on the bonded indebtedness of the Telephone Company, including the interest on the outstanding bonds, if any, of The Home District Telephone Company and all other underlying bonds, and on the bonds proposed to be issued, but not including the interest payable by the Telephone Company on any bonds in any sinking fund.

(3) Whenever requesting the authentication of any bonds under the provisions of this Section 5 of Article Second, the Telephone Company shall furnish to the Trustee *(a)* a certified copy of a resolution of the Board of Directors of the Telephone Company, setting forth (1) the aggregate amount of bonds issued hereunder at the time outstanding, (2) the purpose of the issue of the bonds of which authentication is requested, and (3) the amount, series and denominations of such bonds; and *(b)* a certificate showing that the net earnings of the Telephone Company have been sufficient to comply with the terms of paragraph 2 of this Section 5 of Article Second.

(4) Whenever requesting the payment of deposited moneys, or the authentication of any bonds under the provisions of this Section 5 of Article Second (except in case the cash proceeds thereof are deposited with the Trustee as hereinbefore provided), the Telephone Company shall furnish to the trustee a certificate or certificates describing in reasonable detail the property or securities or work on account of which the authentication of bonds, or the payment of cash is requested, and stating (a) the actual cash cost thereof to the Telephone Company and that such property or securities were acquired or the work done subsequent to the date of this indenture; (b) that no part of the ex-

Article Second, Section 5.
penditures has been included in any certificate previously furnished to the Trustee under any of the provisions of this Article Second or has been made the basis of the withdrawal of any moneys or the release of property or securities under any other provision of this indenture, or has been made or incurred for repairs, maintenance or renewals; (c) that the Telephone Company, to the knowledge of the officers making such certificates, is not in default in the performance of the provisions of this indenture; (d) whether any property so acquired is subject to any lien or charge, which shall be particularly described, excepting undetermined liens and charges incident to construction and taxes for the current year, and setting forth the amount of every such lien or charge; and (e) such certificate may also state any other fact pertaining to the issue and authentication of bonds or the payment of deposited moneys under this Article Second. In case such certificate or certificates shall apply to any shares of stock, bonds or other obligations of other corporations, of the nature and character in this Section 5 of Article Second specified, such certificate or certificates shall also state the amount of the capital stock of each such corporation outstanding, the amount thereof then owned or to be acquired by the Telephone Company, the reasonable value of the property then subject to the lien of this indenture, and the proportion of such reasonable value represented by stock, bonds or other corporate obligations, and such certificate or certificates shall be accompanied by an opinion of counsel satisfactory to the Trustee (who may be counsel for the Telephone Company), that such shares of stock, bonds or other obligations have been legally issued, that the acquisition thereof by the Telephone Company is authorized by law, and that any shares of stock so acquired are fully paid and non-assessable.

In every case, where additional real estate is acquired, there shall be furnished to the Trustee an opinion of counsel satisfactory to it (who may be counsel for the Telephone Company) to the effect that the Telephone Company has good title thereto, together with all such deeds, conveyances or instruments of further assurance which may be necessary for the purpose of subjecting the same to the lien and operation of this indenture as a first lien thereon (except the liens, if any, specified in paragraph (d) of the certificate hereinbefore referred to), unless, in the opinion of such counsel, no such deeds, conveyances or instruments of further assurance are necessary for such purpose; and all such additional real estate shall forthwith and ipso facto become subject to the lien of this indenture.

Every certificate furnished under this Section 5 of Article Second shall be signed by the President or a Vice-President, and also by the Treasurer or chief accounting officer, or an Engineer of the Telephone Company. The same person need not certify to all the facts required

to be certified, but different persons may certify to different facts respectively.

Upon receipt of such certificate or certificates, and a certified copy of such resolution or resolutions and other writings, the Trustee shall authenticate and deliver to, or upon the written order of, the Telephone Company, an amount of bonds secured hereby of the description called for in such resolution, of the aggregate principal amount requested by the Telephone Company but not exceeding seventy-five per cent of the expenditures, as set forth in such certificate or certificates, or pay to the Telephone Company from the deposited moneys the cash proceeds of the sale of a face amount of bonds equal to seventy-five per cent of such expenditures. Provided, however, that if it shall appear in the certificate to be furnished hereunder that any property, on account whereof request is made for the payment of deposited moneys or the authentication of any bonds, is subject to any lien or charge required to be stated in such certificate, the face amount of such lien or charge as so certified shall be added to the cost stated in said certificate, for the purpose of ascertaining the total cost of such property, and thereupon the Trustee shall reserve from the aggregate face amount of bonds which the Telephone Company would otherwise be entitled to have certified and delivered a face amount equal to the amount of such lien and incumbrance and the balance remaining shall be the face amount of bonds which the Trustee shall certify and deliver or the proceeds of the sale of which the Trustee shall pay, in the first instance.

Section 6. No bond shall be authenticated or delivered by the Trustee in case the Telephone Company shall at the time be in default in the payment of interest or principal of any of the bonds secured hereby, or in default in the observance of any of the covenants on its part to be performed under the provisions of this indenture and such default shall be known to the Trustee.

Section 7. The resolutions, certificates and other instruments provided for in this Article Second may be accepted by the Trustee as satisfactory and conclusive evidence as to the statements therein contained and shall be full authority to the Trustee for the authentication and delivery of bonds or for the payment of the proceeds thereof, but before authenticating and delivering any bonds under this Article Second or before making any payment of the proceeds thereof, the Trustee may, in its discretion, and shall, if requested in writing so to do by the holders of not less than 25% in amount of bonds then outstanding hereunder and furnished with indemnity satisfactory to it, cause to be made such independent investigation as it may see fit, and in that event, may decline to authenticate and deliver such bonds or to make any payment of the proceeds thereof, unless and until satisfied by such investigation of the substantial accuracy of such resolutions, cer-

tificates and other instruments. The reasonable expense of any such investigation shall be paid by the Telephone Company, or, if paid by the Trustee, shall be repaid by the Telephone Company upon demand, and until repaid, shall be a first charge upon the trust estate.

ARTICLE THIRD

Concerning Securities of other Corporations.

Section 1. If the Telephone Company shall request the Trustee to certify any bonds under the provisions of Section 5 of Article Second hereof, on account of the acquisition by the Telephone Company of stock, bonds or other obligations of other corporations, the Telephone Company shall, simultaneously with the delivery to it of such bonds by the Trustee, deposit with the Trustee certificates for all such shares of stock and such bonds or other corporate obligations, which stock, bonds and other obligations shall thereupon become subject to the lien of this indenture. Such certificates of stock, and such bonds, if registered, shall be accompanied by irrevocable powers of attorney sufficient to enable the Trustee to make such transfers thereof as it may be authorized by this indenture to make. Until default, such shares of stock and registered bonds shall not be transferred into the name of the Trustee or any other person.

The Trustee, at the request of the Telephone Company, may do whatever may be necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any company, all or a part of whose capital stock shall be held by the Trustee hereunder, and for such purpose, from time to time and whenever requested in writing by the Telephone Company, the Trustee shall sell, assign, transfer and deliver (for a nominal consideration if the Telephone Company shall so desire) a sufficient number of any shares of stock that then shall be held by the Trustee hereunder, to qualify persons to act as directors of, or in any official relation to the several companies which shall have issued such shares; and in every such case the Trustee may make such arrangements as it shall deem necessary for the protection of the trusts hereunder.

Section 2. So long as there shall be no continuing default of the character hereinafter in Section 2 of Article Ninth specified, the Telephone Company shall have the right to receive, hold and dispose of, free from all the trusts hereof, the dividends or other income which may be paid upon any stocks, bonds or other corporate obligations which may, at any time be owned by it and pledged with the Trustee, and the Trustee shall from time to time deliver to the Telephone Company all such suitable orders in the premises as are necessary and proper to enable the Telephone Company to collect and receive the same, and

the Trustee at once shall pay over to the Telephone Company any such dividend or income which may be collected or received by it.

Provided, however, and hereby it is declared and agreed, except as in this indenture otherwise expressly provided, that (1) the Telephone Company shall not be entitled to receive and the Trustee shall not pay over to the Telephone Company the principal of any bond or other corporate obligation subject to the lien of this indenture; (2) the Telephone Company shall not be entitled to receive and the Trustee shall not pay over to the Telephone Company any interest on any such bond or corporate obligation which shall have been collected or paid out of the proceeds of any sale or condemnation of the property covered by a mortgage securing such bonds or corporate obligations, or out of the proceeds of sale of any other property of the company liable upon such bonds or obligations in case of the dissolution or liquidation of such company, it being the intention that the Telephone Company shall be entitled to receive only payment made out of the rents, revenues, income or proceeds of operation of such properties; (3) the Telephone Company shall not collect any such coupons or interest by legal proceedings or by enforcement of any security therefor except with the assent of the Trustee nor in any manner which the Trustee shall deem prejudicial to the trusts hereunder; (4) the Telephone Company shall not be entitled to collect any stock dividends that may be declared on any shares of the capital stock of other corporations that shall be subject to the lien of this indenture, and in case any stock dividends are so declared the certificates therefor shall by the Telephone Company be endorsed and delivered to the Trustee; (5) the Telephone Company shall not be entitled to collect any cash dividends on any such shares that may become payable upon or in the course of the dissolution, liquidation or winding up of any such company or in any way shall be chargeable to or payable out of capital; and that (6) until actually paid, released or discharged, every coupon or right to interest or dividends and all such other claims and indebtedness shall remain subject to this indenture. The Trustee shall be entitled to assume that any interest received by the Trustee on any bond or other obligation or any dividend received in money on any shares of stock is paid out of rents, revenues, income or proceeds of operation, until the Trustee shall be notified in writing to the contrary; and, in the absence of such written notification, it shall be presumed, as between the Trustee and the bondholders, that the Trustee in making any payment thereof to the Telephone Company acted in good faith. If any such coupons or interest obligations delivered to the Telephone Company shall not forthwith be paid or canceled, the Telephone Company shall return the same to the Trustee.

In case (1) any sum shall be paid on account of the principal of any

Article Third, Section 3.

bonds or (except as herein otherwise expressly provided) of any obligation or indebtedness subject to the lien of this indenture, or in case (2) any sum on account of the interest on any such bonds or obligations shall be paid out of the proceeds of any sale or condemnation of property covered by mortgage or trust deed securing such bonds, obligations, or indebtedness, or in case (3) upon the dissolution or liquidation of any company any sum shall be paid upon any bonds or any shares of stock or any claims against or indebtedness of such company, subject to the lien of this indenture, then, in any such case, any such sum, unless received by a trustee under some indenture which is a prior lien thereon upon the trusts of such indenture, or unless applied on account of the purchase price of property purchased pursuant to Section 4 of this Article Third, shall be paid over to the Trustee and by it shall be held to be disposed of as provided in Section 3 of Article Eighth hereof.

Section 3. While the Telephone Company shall not be in default as aforesaid it shall have the right to vote upon all shares of stock subject to the lien of this indenture, for all purposes not inconsistent with the provisions or purposes of this indenture, and from time to time upon demand of the Telephone Company the Trustee forthwith will cause to be executed and delivered to the Telephone Company, or its nominee or nominees, suitable powers of attorney or proxies for such purpose; provided, however, that such voting power shall not at any time be exercised for the purpose of authorizing any increase in the stock, or, except as hereinafter expressly authorized, any lien, security or charge to be created or imposed upon the property or franchises of any corporation two-thirds or more of whose outstanding capital stock is pledged hereunder, unless effective provision be made by the pledge of additional stock so that the ratio of the stock of such corporation pledged hereunder to its entire outstanding stock shall not be decreased, or unless the bonds or other obligations evidencing any such lien, security or charge, immediately upon their creation and issue shall be acquired by the Telephone Company and pledged subject to all the terms and conditions of this indenture, and for the purpose of such acquisition bonds secured hereby may be issued in accordance with the terms of Article Second hereof.

Nothing in this Article Third contained shall require the assignment or pledge under this indenture, or prevent the creation, issue or disposition by any company, all or part of whose outstanding capital stock may at the time be pledged hereunder, free from the lien thereon of this indenture, of any of the following:

(a) any promissory obligations or other evidences of indebtedness which may be issued in the current operation of its property by such company; or

(b) a purchase money mortgage or purchase money lien upon any property which may hereafter be acquired by such company and which purchase money mortgage or lien shall apply to and be a charge upon only such property so acquired; or

(c) the refunding, renewal or extension of bonds or other obligations (other than underlying bonds) of such a company at any time validly outstanding.

So long as there shall be no continuing default of the character hereinafter in Section 2 of Article Ninth specified, the Telephone Company at any time and from time to time may consent to the refunding, renewal or extension by any other company of any issue of its bonds or obligations (other than underlying bonds) the whole or part of which shall be subject to the lien of this indenture. Unless there shall be such continuing default and the Trustee shall have been notified thereof, the Trustee, if requested in writing by the Telephone Company, shall consent to any such refunding, renewal or extension. In case such a default shall have occurred and shall be continuing, the Trustee may, in its discretion, consent to such refunding, renewal or extension by any company of any issue of its bonds as above provided, without the consent or request of the Telephone Company.

In case any bonds or obligations subject to the lien of this indenture shall be refunded, the refunding bonds or obligations acquired by the Telephone Company in lieu thereof shall forthwith be pledged subject to the lien of this indenture and shall be held in the same manner as those for which they are substituted. In case any bonds or obligations subject to the lien of this indenture shall be so renewed or extended such bonds or obligations as so renewed or extended shall continue to be secured as before, and shall remain subject to the lien of this indenture in the same manner as theretofore.

Section 4. In case at any time all or any of the property of any corporation all or part of whose outstanding capital stock and/or bonds and/or other obligations are pledged hereunder shall be sold at any judicial or other involuntary sale, the Trustee in its discretion may, and if requested in writing by the Telephone Company or by the holders of a majority in amount of the bonds hereby secured and then outstanding, and if supplied with the amount of money necessary therefor, shall purchase or cause to be purchased such property and shall use such stocks, bonds and other obligations so far as may be to make payment for such property; and in case of such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested in the Telephone Company and become subject to the lien hereof or to be vested in some other corporation organized or to be organized, with power to acquire and manage such property, provided that all the bonds and other indebtedness (except such, if any, as the property was ac-

Article Third, Sections 5 and 6; Article Fourth, Section 1.

quired subject to) and all the outstanding capital stock thereof (excepting the number of shares required to qualify directors), shall be deposited with the Trustee, and shall be held for the benefit of the Telephone Company or its assigns, subject to this indenture.

Section 5. The Trustee at any time may and, if requested by the Telephone Company, shall take such steps as in its discretion it may deem advisable to protect its interests and the interests of the bondholders in respect of any stock, bonds, or other corporate obligations subject to the lien hereof, and for that purpose it may join in any plan of reorganization in respect of any such stock, bonds or other corporate obligations, subject to the lien hereof and may accept in lieu of any securities subject to the lien hereof, new securities issued in exchange therefor under such plan.

Section 6. The Telephone Company covenants that on demand of the Trustee it forthwith will pay or will satisfactorily provide for all expenditures incurred by the Trustee under any of the provisions of Sections 4 and 5 of this Article, including all sums required to obtain and perfect the ownership and title to any property which the Trustee shall purchase or cause to be purchased pursuant to the provisions thereof, and in case the Telephone Company shall fail so to do, then without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the Telephone Company, the Trustee in its discretion may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee or by others, at its request, with interest thereon, the Trustee shall have a lien prior to the lien hereof upon all the bonds or stock in respect of which such advances have been made and the proceeds thereof and upon any property acquired by means thereof.

ARTICLE FOURTH

Sinking Fund.

Section 1. The Telephone Company covenants that, as and for a sinking fund for the benefit and security of the bonds of Series A issued hereunder, it will pay to the Trustee, on the first day of April, and on the first day of October in each year beginning with the year 1926, the sum of two hundred and five thousand dollars ($205,000). The moneys so paid to the Trustee shall be applied by it to the purchase of bonds of said Series A at the lowest price at which they can be obtained readily, but not exceeding 105 per cent of the principal amount thereof and accrued interest. The Trustee may advertise publicly for proposals to sell such bonds to the sinking fund or may purchase the same either at public or private sale, as to it may seem most advisable.

Article Fourth, Section 2; Article Fifth, Section 1.

If and whenever bonds are not offered to the sinking fund at a price not exceeding 105 per cent. of the principal amount thereof and accrued interest in amounts sufficient to exhaust such fund, the Trustee shall forthwith, and in any case on or before the interest payment date next succeeding the sinking fund payment, call such additional bonds as may be necessary to exhaust such fund. Such additional bonds shall be so called by lot by the Trustee on any date at 105 per cent of the principal amount thereof with accrued interest thereon, upon the notice and in the manner provided in Article Fifth hereof in respect of the redemption of bonds by the Telephone Company. Each and every holder of the bonds hereby agrees, upon any such call for acquisition of such bonds for the sinking fund, to accept payment thereof when called in accordance with the terms of this indenture, and interest on such bonds shall cease after the date of call except as hereinafter provided. Bonds acquired for the sinking fund as provided in this Article Fourth shall not be canceled but shall be stamped by the Trustee "Held for sinking fund for Series A bonds under First and Refunding Mortgage of the Telephone Company of America, dated October 1, 1925;" and the Trustee shall collect, and the Telephone Company covenants to pay to the Trustee, the interest from time to time maturing on the bonds held in the sinking fund. All such interest moneys shall be included in the sinking fund as additional payments thereto by the Telephone Company, to be applied as in this Article Fourth provided in respect of other sinking fund moneys for the acquisition of Series A bonds. Except for the purpose of such collection of interest by the Trustee, bonds held in the sinking fund shall not be deemed outstanding for any purpose of this indenture.

Section 2. In the creation of any other series of bonds hereunder the Telephone Company may by vote of its Board of Directors establish a sinking fund and fix the amount and other terms thereof. Such terms shall be appropriately expressed in each of the bonds of such series.

ARTICLE FIFTH

Redemption of Bonds

Section 1. The Telephone Company may, at its option, on any interest-payment date, redeem all or any of the bonds of Series A then outstanding hereunder, at 105 per cent of the face value thereof, with accrued interest thereon, upon sixty days' notice as hereinafter provided, and each of the bonds of said Series shall contain a provision to that effect.

In the creation of any other series of bonds hereunder the Telephone Company may reserve the right to redeem, before maturity, all or any

Article Fifth, Section 1.

part of the bonds of such series at such time or times and on such terms as the Board of Directors of the Telephone Company may determine and as shall be appropriately expressed in each of the bonds of such series, the day of redemption being in every case an interest payment date.

In case the Telephone Company shall desire to exercise such right to redeem and to pay off all, or, as the case may be, any part of the bonds of a particular series in accordance with the right reserved so to do, it will publish in two daily newspapers of general circulation published in the Borough of Manhattan, in the City of New York, the first such publication to be at least sixty and not more than eighty days prior to the date fixed for payment, and thereafter publication to be made at least once during each week until said redemption date, a notice to the effect that the Telephone Company has elected to redeem and pay off all the bonds of such series or a part thereof, as the case may be, on such date, specifying in case of partial redemption the serial numbers of the coupon bonds to be redeemed and the serial numbers of the coupon bonds endorsed on the registered bonds without coupons to be redeemed, and in every case stating that on said date there will become due and payable upon each of the bonds or, in case of partial redemption, upon each coupon bond and upon each registered bond without coupons or portion thereof, so to be redeemed, at the office or agency of the Telephone Company at which the principal of the bonds is payable, the principal thereof with such premium, if any, as is specified in such bonds, together with the accrued interest to such date, and that from and after said date interest thereon will cease to accrue. Similar notice shall be sent by the Telephone Company through the mails, postage prepaid, at least sixty and not more than eighty days prior to such redemption date, to the holders of registered bonds without coupons and to the registered holders of coupon bonds so to be redeemed to the addresses that shall appear upon the transfer register, but failure so to mail any such notice shall not affect the validity of the redemption proceedings. In case the Telephone Company shall have elected to redeem and pay off less than all the outstanding bonds of any series it shall, in each such instance, at least ten days before the date upon which the first publication of the notice of redemption hereinbefore mentioned is required to be made, notify in writing the Trustee of its said election and of the aggregate principal amount of bonds of such series to be redeemed, and thereupon the Trustee shall draw by lot, in any manner by it deemed proper, from the serial numbers of coupon bonds of said series outstanding and the serial numbers of coupon bonds endorsed upon registered bonds without coupons of said series outstanding, the distinguishing numbers of an amount of bonds of such series equal to such aggregate principal amount, and shall within five days after receiving the notice aforesaid notify

the Telephone Company in writing what bonds shall have been so drawn. If any numbers so drawn shall be the numbers of coupon bonds endorsed on outstanding registered bonds without coupons, the notice of redemption hereinbefore mentioned shall specify the respective numbers of such registered bonds as well as the serial numbers of the coupon bonds so drawn, and in the case of any registered bonds without coupons which are to be redeemed in part only (by reason of the fact that the serial numbers of all of the coupon bonds endorsed on such registered bonds shall not have been drawn), said notice shall specify the respective portions of the principal amount thereof to be redeemed, and state that upon presentation of such registered bonds for redemption new bonds of the same series of an aggregate principal amount equal to the unredeemed portions of such registered bonds will be issued in lieu thereof. In case there shall have been drawn for redemption as aforesaid one or more but less than all of the coupon bonds with serial numbers endorsed upon a registered bond without coupons, the Telephone Company shall execute and the Trustee shall authenticate and deliver to the registered holder thereof or on his order and at the expense of the Telephone Company, a new bond or new bonds for the amount of the surrendered registered bond less the principal amount paid on surrender and partial payment of the bond so partially redeemed.

From and after the redemption date specified in the notice above provided for (unless the Telephone Company shall fail to pay upon demand the bonds to be redeemed as herein provided) no further interest shall accrue upon any of the bonds so to be redeemed (or, in the case of registered bonds, only a portion of the face amount of which is to be redeemed, on such portion thereof), and anything in said bonds or in such coupons or in this indenture to the contrary notwithstanding, any coupons for interest pertaining to any such bonds and maturing after said date shall become and be null and void.

Section 2. On the deposit with the Trustee of the amount necessary so to redeem all the outstanding bonds secured by this indenture (if they shall be redeemable and shall all have been duly called for redemption) together with proof by affidavit that said notice or notices of redemption have been given as hereinbefore provided for, and on payment to the Trustee of all its costs, charges and expenses in relation thereto or otherwise under this indenture, the Trustee shall cancel and satisfy this indenture and cause the same, at the expense of the Telephone Company, to be discharged of record, and shall assign or cause to be assigned and shall deliver to the Telephone Company or upon its order all securities and moneys then held by the Trustee under the provisions hereof other than the moneys deposited under this Section 2 of Article Fifth. The moneys so deposited with the Trustee shall be ap-

plied by it to the payment of the bonds issued under this indenture at the redemption rate or rates with accrued interest to the interest day or days designated for redemption.

Section 3. All bonds redeemed and paid under this Article Fifth shall be canceled and, on demand, surrendered to the Telephone Company.

ARTICLE SIXTH

Particular Covenants of the Telephone Company

The Telephone Company hereby covenants and agrees as hereinafter in this Article set forth:

Section 1. That it will duly and punctually pay the principal and interest of every bond authenticated and delivered by the Trustee under this indenture, at the dates, place and in the manner mentioned in such bonds or any coupons thereto belonging, according to the true intent and meaning thereof. The interest on the coupon bonds until maturity shall be payable only upon the presentation and surrender of the several coupons for such interest as they respectively mature, and when paid, such coupons shall forthwith be canceled. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

That it will not directly or indirectly, extend, or assent to the extension of, the time for payment of any coupon or claim for interest on any bond secured hereby, and that it will not, directly or indirectly, be a party to any arrangement therefor by purchasing or funding said coupons or claims for interest or in any other manner.

Section 2. That at all times, until the payment of the bonds issued hereunder, it will cause an office or agency to be maintained by it in the Borough of Manhattan, City of New York, where the bonds and coupons may be presented for payment, and notices and demands in respect of the bonds and coupons under this indenture may be served, and will, by written notice, designate such office or agency to the Trustee. In default of any such office or agency, presentation for payment may be made and notice and demand served at the principal office in said Borough of Manhattan of the Trustee or any successor to it in the trust.

Section 3. The Telephone Company will, within thirty days after the execution of this indenture, execute and deliver to the Trustee an instrument or instruments supplemental hereto conveying to the Trustee upon the trusts and conditions hereby created all the real estate hereby mortgaged, or intended to be, by appropriate and detailed description. At any and all times it will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and deliv-

ered by any other corporation or person obligated to the Telephone Company so to do, all and every such further acts, deeds, conveyances, mortgages and transfers and assurances as the Trustee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Trustee all and singular the hereditaments, the premises, estates and property hereby conveyed or assigned, or intended so to be, or which the Telephone Company may hereafter become bound to convey, or assign to the Trustee.

Section 4. That it has good title to and is possessed of the lands and other property described in the granting clauses hereof and thereby granted, and the Telephone Company will warrant and defend the title to said lands and other property as well as to any lands and other property hereafter made subject to the lien of this indenture, to the Trustee, its successors in the trust and its and their assigns for the benefit of the holders of bonds issued hereunder against claims and demands of all persons whomsoever; subject, however, in so far as affected thereby, to the lien described or referred to in the granting clauses hereof and in the case of any such lands and other property hereafter subjected to the lien of this indenture to the liens and incumbrances thereon, if any, at the time they shall become subject to the lien of this indenture.

Section 5. That it will not voluntarily create, or suffer to be created, any debt, lien or charge having priority to the lien of this indenture, upon the trust estate, but it shall not be required to pay any such debt, lien or charge so long as it shall, in good faith and by appropriate proceedings, contest the validity thereof, unless thereby, in the judgment of the Trustee, the security afforded by this indenture will be materially endangered. That it will not increase the outstanding issue of bonds under any underlying mortgage, now or hereafter a lien upon the mortgaged premises or any part thereof. That it will not extend or consent to the extension of the time of payment of the principal of any bonds secured by any such underlying mortgage, and before or at the maturity thereof will pay or cause to be paid the principal of, or will acquire and pledge hereunder, all such bonds and, until paid or discharged at maturity, or otherwise, will, except as provided in paragraph (3) of Section 4 of Article Second hereof, pay the interest thereon or cause it to be paid at the times and at the place or places therein, or in the coupons attached thereto set forth.

Section 6. That it will from time to time pay or cause to be paid, in respect of the bonds of Series "A," any and all taxes imposed by the Commonwealth of Pennsylvania upon any such bond or upon the holder as a resident thereof, not in excess of four mills per annum on each dollar of the principal amount of such bonds, and also all taxes and assessments lawfully levied or assessed upon the property and fran-

Article Sixth, Sections 7 and 8.

chises hereby mortgaged or pledged or intended so to be or upon any part thereof, and upon all other property, income and profits of the Telephone Company, when the same shall become lawfully due and payable, and will not suffer any mechanics', laborers', statutory or other similar liens to remain outstanding upon the mortgaged premises and pledged property, or any part thereof, the lien whereof might or could be held to be prior to the lien of this indenture; and if any corporation at any time while two-thirds or more of its capital stock shall be subject to this indenture shall fail to pay all such taxes and assessments lawfully imposed upon the property of such corporation or upon the income and profits thereof, then the Telephone Company itself will pay the same or make adequate provision for the satisfaction and discharge thereof; provided however, that the Telephone Company or any such corporation shall have the right to contest by legal proceedings any taxes, assessments or liens not hereby created and pending such contest may delay or defer the payment thereof.

Section 7. That it will not, except as herein allowed, do or suffer to be done any act or thing whereby the lien hereof might or could be impaired and that it will at all times maintain, preserve and keep the mortgaged premises and every part thereof, with the fixtures and appurtenances thereof, in thorough repair, working order and condition; and that it will from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements, so that the operations and business thereof and every part thereof shall at all times be conducted with safety and expedition; and whenever any portion of the mortgaged premises or said fixtures or appurtenances shall be worn out or destroyed or shall have become obsolete, inefficient or otherwise unfit for use it will procure substitutes of at least equal value and capacity so that at all times the value and capacity of said mortgaged premises and the fixtures and appurtenances thereof shall be fully kept up; and at all times it will set apart, use and apply for that purpose so much of the revenue of the property mortgaged as may be required for such maintenance.

Section 8. That it will at all times keep such parts of the said mortgaged premises or property as are liable to be destroyed or injured by fire insured against loss or damage to the extent that such property is usually insured, or in lieu of or supplementing such insurance, it will adopt such other plan or method of protection against loss or damage by fire, whether by the establishment of an insurance fund or otherwise, as may be determined by the Board of Directors of the Telephone Company, and that annually, or at such other times as the trustee shall request, it will file with the trustee a statement, in reasonable detail, showing the insurance then in force. The proceeds of any such insurance, if exceeding in any case of loss the amount of $25,000, shall,

if not required to be deposited with the Trustee under any mortgage to which said property may be subject prior to the lien of this indenture, be paid to the Trustee which shall, at the request of the Telephone Company and under its direction, pay over the same to the Telephone Company from time to time for any of the purposes and in the manner in Section 3 of Article Eighth hereof set forth.

Section 9. That it will keep full and complete records and accounts showing the sale of each series of bonds issued hereunder, and the price or prices received therefor, and the several purposes for which the proceeds thereof were expended, and the amounts of such several expenditures. Such records and accounts shall be open at all times to the inspection of the Trustee.

Section 10. That it will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained, and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply the same or the proceeds thereof, or will cause the same to be applied, to and for the purposes herein prescribed and to and for no other or different purposes.

Section 11. That it will pay any mortgage recording tax legally due upon the recording hereof and will further record every indenture supplemental hereto, which may be recorded as a mortgage of real or personal property, and will comply with the requirements of any and every mortgage recording tax law or similar law affecting the due recording of this indenture or any indenture supplemental hereto, and will do whatever else may be necessary in order to perfect and continue the lien of this indenture upon the mortgaged premises.

ARTICLE SEVENTH

Consolidation, Merger and Purchase

Section 1. Nothing contained in this indenture shall prevent any consolidation or merger of the Telephone Company with or into any other corporation or corporations, or any conveyance, or transfer, or lease, subject to the continuing lien of this indenture of all or any part, of the mortgaged property to any corporation lawfully entitled to acquire or lease and operate the same; provided, however, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as fully to preserve and in no respect to impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the bondholders hereunder; and provided, further, that any such lease shall be made expressly subject to immediate termination by the Telephone Company or by the Trustee at any time during the continu-

Article Seventh, Section 2.

ation of a default hereunder, and also by the purchaser of the property so leased at any sale thereof, whether such sale be made under the power of sale hereby conferred or under judicial proceedings; and provided, further, that upon any such consolidation, merger, conveyance or transfer the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this indenture to be kept or performed by the Telephone Company, shall be expressly assumed by the corporation formed by any such consolidation or into which such merger shall have been made, or acquiring by conveyance or transfer all the property subject to this indenture.

Section 2. In case the Telephone Company, pursuant to Section 1 of this Article, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to the lien of this indenture, all the mortgaged property as an entirety, the successor corporation formed by such consolidation or into which the Telephone Company shall have been merged, or which shall have received a conveyance or transfer as aforesaid, and any successor to such consolidated or merging corporation whether by successive consolidations, mergers or otherwise, upon executing and causing to be recorded an indenture with the Trustee satisfactory to the Trustee, whereby said successor corporation shall assume and agree to pay, duly and punctually, the principal and interest of the bonds hereby secured in accordance with the provisions of said bonds and coupons and this indenture, and shall agree to perform and fulfill all the covenants and conditions of this indenture binding upon the Telephone Company, shall succeed to and be substituted for the Telephone Company, with the same effect as if it had been named herein as the mortgagor company; and such successor corporation thereupon may cause to be signed, issued and delivered in its own name any or all of such bonds which shall not theretofore have been signed by the Telephone Company and authenticated by the Trustee, and upon the order of such successor corporation in lieu of the Telephone Company, and subject to all the terms, conditions and limitations in this indenture prescribed, the Trustee shall authenticate and deliver any of such bonds which shall have been previously signed and delivered by the Telephone Company to the Trustee for authentication, and any of such bonds which such successor corporation shall thereafter, in accordance with the provisions of this indenture, cause to be signed and delivered to the Trustee for such purpose. All the bonds so issued shall in all respects have the same legal right and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture as though all of said bonds had been issued at the date of the execution hereof. In case of such consolidation or merger or conveyance and transfer such changes in phraseology and form (but not in

substance) may be made in the bonds hereby secured, thereafter to be issued, as consequent upon such consolidation or merger, or conveyance and transfer, may be appropriate.

The Trustee may receive the opinion of any counsel selected by it (who may be the counsel of the Telephone Company) as conclusive evidence that any such indenture complies with the foregoing conditions and provisions of this Section.

Section 3. Any corporation, all or any part of whose outstanding capital stock is pledged hereunder, may be consolidated or merged with, or all or any part of the property of any such corporation may be sold or conveyed to, the Telephone Company or any other corporation, provided, however, that in case of the consolidation or merger with or sale and conveyance to any other corporation than the Telephone Company, there shall continue to be or shall be made subject to the lien of this indenture, all stock issued in respect of the previously pledged stock; and provided further that, in case more than a majority of the outstanding capital stock of any such corporation is pledged under the lien of this indenture, upon any such merger, consolidation, sale or conveyance, a majority or more of the outstanding capital stock of such other corporation resulting from such merger or consolidation or to which such sale or conveyance shall be made, shall simultaneously be pledged under the lien of this indenture.

In case of the consolidation of the Telephone Company with or the merger into it of a corporation, any of the capital stock of which shall be pledged under this indenture, or in case of the conveyance and transfer to the Telephone Company of all of the property of such corporation, and by such merger, consolidation, conveyance or transfer the property of such corporation is made subject to the lien of this indenture, the lien of this indenture upon such stock shall terminate upon such consolidation or merger, or conveyance or transfer becoming effective, and any such capital stock, if then in the possession of the Trustee, shall be surrendered by it to the Telephone Company or to the successor corporation, upon the delivery to the Trustee of an opinion of counsel satisfactory to it (who may be counsel for the Telephone Company) that the property of such corporation acquired by the Telephone Company by such merger, consolidation, conveyance or transfer has become subject to the lien of this indenture.

In case of the consolidation of the Telephone Company with or the merger into it of a corporation, any of the bonds or other evidences of indebtedness of which shall be pledged under this indenture, or in case of the conveyance and transfer to the Telephone Company of all of the property of such a corporation, the lien of this indenture thereon shall terminate upon such consolidation or merger or conveyance and transfer becoming effective, and such bonds or other evidences of in-

Article Seventh, Section 4; Article Eighth, Sections 1 and 2.

debtedness, if then in the possession of the Trustee, shall be surrendered by it to the Telephone Company or to the successor corporation; provided, however, that such lien shall not terminate, and such bonds or other evidences of indebtedness shall not be surrendered, unless or until the property of the corporation so consolidated with or merged into the Telephone Company or so conveyed and transferred to it shall have been subjected to the lien of this indenture, nor unless or until there are no outstanding bonds or other indebtedness secured by lien upon said property which lien is junior to the lien securing such bonds or other evidences of indebtedness held by the Trustee, and prior to the lien of this indenture.

Section 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the term "Telephone Company" includes and means not only the party of the first part hereto but also any successor corporation.

ARTICLE EIGHTH

Concerning the Property Mortgaged.

Section 1. Until default shall be made by the Telephone Company in the payment of the principal of or the interest upon the bonds issued hereunder, or any of them or some part thereof, according to the tenor and effect thereof; or until default shall be made in respect of some other act or thing in said bonds or herein required to be done, the Telephone Company shall be entitled to possess, manage, operate, use and enjoy, and be suffered and permitted to remain in the actual and undisturbed possession of all and singular the property hereby mortgaged (other than bonds, certificates of stock, cash and other indebtedness pledged or to be pledged hereunder with the Trustee), and to receive, take and use the rents, income and profits thereof as if this indenture had not been made, with power in the ordinary course of business to use and consume the supplies and deal with the contracts and choses in action, and to alter, repair, change and add to its buildings, structures and any or all of its plant and equipment, and the appliances appertaining to or used in connection with its telephone system, constructed or owned or hereafter constructed or acquired by the Telephone Company, and conveyed or intended to be conveyed hereby to the Trustee.

Section 2. As long as the Telephone Company shall remain in possession of the mortgaged premises and there shall be no continuing default under this mortgage, it may alter, remove, sell, exchange or otherwise dispose of such materials, appliances, instruments and other movable property as may become worn out or no longer be necessary or profitable for the use of the Telephone Company; provided it shall immediately renew the same or substitute other property therefor which

in its judgment may be of the same or greater utility or value, so that such alteration, removal or disposition will not impair the security of the bonds issued hereunder; and it may also alter or remove any improvements, buildings or other structures upon or under the surface of any lands, tenements or hereditaments constituting a part of the mortgaged premises, if such alteration or removal will, in its opinion, enable it to use its property to better advantage in the judicious and most profitable operation and management of its business; and the Telephone Company covenants that it will keep its system and property up to as high efficiency for practical and profitable operation in every respect as before such alteration or removal.

As long as the Telephone Company shall remain in possession of the mortgaged premises and there shall be no continuing default under this mortgage, the Telephone Company may without any release by the Trustee sell, free from the lien of this indenture any physical real or personal property of any kind whatsoever, constituting a part of the mortgaged premises, which shall no longer be necessary or profitable for the use of the Telephone Company; provided that the total amount of the property which may be disposed of under the provisions of this paragraph during any calendar year shall not exceed in value $200,000; and provided further that any money realized from the sale of any such property shall be forthwith reinvested in property such as will upon its acquisition become subject to the lien of this mortgage.

Section 3. As long as the Telephone Company shall remain in possession of the mortgaged premises and there shall be no continuing default under this mortgage, the Trustee shall, upon request of the Telephone Company, evidenced by a certified copy of a resolution of its Board of Directors, convey by a release or otherwise to any person or corporation designated by the Telephone Company in such resolution, such lands, tenements and hereditaments as in the judgment of the Telephone Company, as determined by said resolution, shall no longer be necessary, useful or profitable in the operation and maintenance of the telephone system and business of the Telephone Company; provided that in each such case other lands, tenements or hereditaments of equal or greater value, in the judgment of the Telephone Company as determined by said resolution, be substituted for the property released and be subjected to the lien of this mortgage, so that such release will not injure the security provided by this mortgage. Nevertheless, instead of substituting other property for the property so released, the Telephone Company may sell the same for cash, or partly for cash and partly on time, the deferred payments to be secured by a first lien on the property sold. But such proceeds of sale shall be paid and delivered to the Trustee and shall be held by it as a part of the security provided by this mortgage. Such proceeds shall, upon request of the Telephone

Article Eighth, Section 4.

Company evidenced by a certified copy of a resolution of its Board of Directors, be paid out by the Trustee only for the actual cash cost of additions to, or extensions of, or betterments and improvements of the telephone plant and system hereby mortgaged, upon a certificate or certificates to be furnished to the Trustee setting forth the facts referred to in clauses (a) to (e), both inclusive, of paragraph (4) of Section 5 of Article Second hereof, and where real estate is acquired, an opinion of counsel as required in connection with the acquisition of real estate as provided in said paragraph; provided that the basis for payment shall be the full amount of such cost instead of only seventy-five per cent thereof. If the Telephone Company shall not within one year after the receipt of the cash proceeds of any such sale, request the Trustee to apply the same as above authorized, the Trustee may invest such cash proceeds, or any part thereof, in the purchase, on the best terms obtainable, but not exceeding the redemption price, of outstanding bonds of any series hereby secured, and upon such purchase shall cancel such bonds and all coupons thereto attached and deliver them to the Telephone Company, or may so invest such cash proceeds, or any part thereof, in other first mortgage bonds approved by the Telephone Company, and shall hold such bonds so purchased, subject to be sold with the consent of the Telephone Company from time to time and their proceeds reinvested as aforesaid. Any income collected on such bonds so purchased shall from time to time, as long as there shall be no default hereunder, be paid to the Telephone Company on demand by it.

Section 4. As long as the Telephone Company shall remain in possession of the mortgaged premises and there shall be no continuing default under this mortgage, the Trustee shall release from the lien of this mortgage any telephone exchange or exchanges, or any telephone line or lines, or plant, or any bond or bonds, or any stock or other securities, or any other property of any kind not coming under the provisions of Sections 2 and 3 of this Article Eighth, but constituting a part of the mortgaged premises, at any time upon the request of the Telephone Company evidenced by a certified copy of a resolution of its Board of Directors setting forth that the property, release of which is asked, is in the judgment of the Telephone Company no longer requisite or necessary or profitable in the operation and maintenance of the telephone system and business of the Telephone Company, and that the Telephone Company has sold, assigned and conveyed the same for a fair and adequate consideration, which shall be named in the resolution. The proceeds of such sale shall be paid to the Trustee and held by it as a part of the security of this mortgage. In case the consideration of such sale shall be in whole or in part other property, such property shall become subject to the lien of this mortgage. There shall also be presented and filed with the Trustee an affidavit of the

President or a Vice President and the Treasurer or an Assistant Treasurer of the Telephone Company, setting forth the amount of the purchase price or consideration and that in their judgment the same was fair and adequate, and also a sworn certificate of a competent engineer, to be selected by the Telephone Company and approved by the Trustee, setting forth that in the judgment of such engineer the consideration agreed upon and received was fair and adequate.

The cash proceeds of any such sale shall be held and disposed of by the Trustee in the manner provided in Section 3 of this Article Eighth.

Section 5. If under the provisions of any mortgage or deed of trust under which underlying bonds are issued, in case of a release of any portion of the mortgaged premises, there is required to be made with the trustees under such mortgage or deed of trust, a deposit of cash or pledge of securities received in payment for said property released, the Telephone Company shall not be required to deposit with the Trustee hereunder such cash or securities to the extent that they may be required to be deposited with the trustees under said prior mortgages or deeds of trust; provided that any such deposits remaining with any of said trustees, upon the discharge and cancellation of said mortgages or deeds of trust, shall be redeposited with the Trustee hereunder and shall be held subject to the lien of this mortgage, or disposed of by the Trustee in the manner provided in Section 3 of this Article Eighth.

Section 6. As long as the Telephone Company shall remain in possession of the mortgaged premises and there shall be no continuing default under this mortgage, the Telephone Company may from time to time deliver to the Trustee shares of the capital stock and/or bonds and/or notes of other corporations which represent interests in telephone properties, in exchange for any of the stock, bonds and/or notes then pledged with the Trustee hereunder, provided the securities given and received shall be exchanged at the value thereof at the time of such exchange, which value shall be determined by two arbitrators, one selected by the President, or a Vice President, or the Directors or Executive Committee of the Telephone Company, and one by the President, or a Vice President, or the Directors or Executive Committee of the Trustee, and in case such arbitrators disagree, such value shall be so determined by a member of the New York Stock Exchange selected by said two arbitrators. In ascertaining such value the average market value of such securities for the six months preceding such valuation may be regarded by said arbitrators as a controlling fact in all cases in which such securities are sold freely upon the market. Such arbitrators may be officers, directors or stockholders of the Telephone Company or the Trustee, or persons having no connection therewith.

Section 7. In no case shall the franchise of the Telephone Company to be a corporation be granted, sold, assigned or exchanged except

Article Eighth, Section 8; Article Ninth, Sections 1 and 2.

as in this indenture provided. No purchaser, grantee, assignee or vendee of any property under the provisions of this Article Eighth, and no one with whom any exchange as herein authorized shall be made, shall be or be held to be liable or responsible for the proper investment, whether by the Telephone Company or by the Trustee, of the moneys or other proceeds of any such grant, assignment, sale, exchange or other proceeding hereby authorized.

Section 8. In case the mortgaged premises or any part thereof shall be in the possession of a receiver lawfully appointed, the powers in and by this Article Eighth conferred upon the Telephone Company may be exercised by such receiver with the approval of the Trustee in respect to the property in the possession of such receiver, and if the Trustee shall be in possession of the mortgaged premises under any provisions of this indenture, then all the powers of this Article Eighth conferred upon the Telephone Company may be exercised by the Trustee in its discretion.

ARTICLE NINTH

Remedies of the Trustee and Bondholders.

Section 1. In case any coupon or claim for interest on any of the bonds hereby secured shall have been funded or extended by or with the consent of the Telephone Company, such coupon or claim for interest so funded or extended shall not be entitled, in case of default hereunder, to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all of said bonds that shall be outstanding and of all coupons and claims for interest thereon that shall not have been so funded or extended. If any coupons or claims for interest on any of said bonds at or after maturity shall be owned by the Telephone Company, then such matured coupons or claims for interest shall not be entitled to the benefit or security of this indenture; and the Telephone Company covenants that all such coupons and claims for interest so owned by it at or after their maturity shall promptly be canceled.

Section 2. If one or more of the following events herein called "events of default" shall happen, that is to say:

(a) default shall be made in the payment of any installment of interest on any bond or bonds issued hereunder when and as the same shall become payable as therein and herein expressed and such default shall continue for the period of ninety days; or

(b) default shall be made in the payment of the principal of any bond or bonds issued hereunder when the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(c) default shall be made in the observance or performance of any

other of the covenants and conditions on the part of the Telephone Company in the bonds hereby secured or in this indenture contained and such default shall continue for the period of ninety days after written notice specifying such default shall have been given to the Telephone Company by the Trustee, which notice may be given by the Trustee in its discretion and shall be given on the written request of the holders of 25% in amount of the bonds hereby secured at the time outstanding; or

(d) default shall be made in the payment of the interest on any bond or obligation outstanding and secured by any lien prior to that of this indenture on the trust estate or any part thereof and such default shall continue for the period of ninety days, or the Telephone Company shall fail at the maturity, whether by declaration or otherwise, of such bonds or obligations and on presentation thereof in accordance with the terms thereof, either to pay said bonds or obligations or to cause them to be taken up and delivered to the Trustee to be held under this indenture, or default shall be made in the performance of any covenant contained in any mortgage or other instrument of trust constituting a lien on any part of the trust estate in priority to this indenture, and by reason of such default any right of entry or right of action for the enforcement of the security afforded thereby shall accrue; or

(e) a decree by a court having jurisdiction of the premises shall have been entered adjudging the Telephone Company a bankrupt and such decree shall have continued undischarged and unstayed for a period of ninety days; or an order of a court having jurisdiction in the premises for the appointment of a receiver of the property of the Telephone Company, or for the winding up or liquidation of its business or affairs, shall have been entered and such order shall have remained in force undischarged and unstayed for a period of ninety days; or the Telephone Company shall institute proceedings to be adjudicated a voluntary bankrupt or shall make an assignment for the benefit of creditors;

then and in each and every such case the Trustee personally or by its agents or attorneys may enter into and upon all or any part of the trust estate, and may exclude the Telephone Company, its agents and servants wholly therefrom, and having and holding the same, may use, operate, manage and control the trust estate or any part thereof, and conduct the business thereof, either personally or by its superintendent, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured, and upon every such entry the Trustee, at the expense of the trust estate, from time to time may make all necessary or proper repairs, renewals, replacements and useful or required alterations, additions, betterments and improvements to and on the trust estate as to it may seem judicious,

Article Ninth, Section 3.

and may pay and satisfy all liens and charges thereon prior to the lien of this indenture, and may insure and keep insured any property subject to the lien of this indenture, and in such case the Trustee shall have the right to manage the trust estate and to carry on the business and exercise all rights and powers of the Telephone Company, either in the name of the Telephone Company, or otherwise, as the Trustee shall deem best; and it shall be entitled to collect and receive all earnings, income, rents, issues and profits of the same and every part thereof. After deducting the expenses of operating said trust estate and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, improvements and all payments which it may be required or may elect to make for taxes, assessments, insurance or prior or other proper charges on said trust estate, or any part thereof, as well as just and reasonable compensation for its own services, and for all agents, clerks and other employees, and for all attorneys and counsel by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due and be unpaid, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the same rate as is borne by the bonds upon which such interest is due; such payments to be made ratably to the persons entitled thereto without discrimination or preference.

In case the principal of any of the bonds hereby secured shall have become due, by declaration or otherwise, and shall be unpaid, first to the payment of the accrued interest (with the interest on the overdue installments thereon at the same rate as is borne by the bonds on which such interest is due), in the order of the maturity of the installments of such interest, and then to the payment of the principal of all bonds hereby secured then due; in every instance such payments to be made ratably to the persons entitled to such payments without any discrimination or preference.

These provisions are, however, subject to the provisions of Section 1 of this Article Ninth.

Upon payment in full of whatever may be due for principal or interest, or both, as the case may be, and the expenses of the Trustee, and in case all other defaults have been made good and secured to the satisfaction of the Trustee, possession of the mortgaged property shall be returned to the Telephone Company or to whosoever shall be entitled thereto.

Section 3. In case one or more of the events of default shall happen and be continuing or if a receiver or the Trustee shall have entered into possession of the trust estate, the Trustee shall be entitled to vote on all shares of stock then subject to the lien of this indenture, and,

for the benefit of the holders of the bonds hereby secured, shall be entitled to collect and receive all dividends on all such shares of stock and all sums payable for principal, interest or otherwise upon any bonds or obligations that shall then be subject to this indenture and to apply, as hereinbefore in Section 2 of this Article Ninth provided, the net moneys received from income; and as holder of any such shares of stock and of any such bonds, to perform any and all acts or to make and execute any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section. In the event that a receiver of the property hereby mortgaged or conveyed or pledged, or any part thereof, shall have been appointed and shall be in possession thereof, the Trustee from time to time in its discretion may turn over any part or all of the moneys so collected and remaining in the hands of the Trustee to such receiver and may cooperate with such receiver in managing and operating the mortgaged properties in such manner as the Trustee shall deem for the best interest of the holders of the bonds secured by this indenture.

Section 4. In case one or more of the events of default shall happen and shall be continuing, then during the continuance of such default, the Trustee may, and upon the written request of the holders of not less than 25% in amount of the bonds hereby secured then outstanding, the Trustee shall, by notice in writing delivered to the Telephone Company, declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds with interest on overdue installments of interest at the same rate or rates as the bonds upon which such interest is in default bear, and the principal of any bonds which shall have become due by their terms, and the expenses of the Trustee, shall either be paid by the Telephone Company, or be collected out of the trust estate before any sale of the trust estate shall have been made, and all other defaults made good or secured to the satisfaction of the Trustee, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Telephone Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereto.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned because of such waiver or for any other reason or shall have been determined adversely to the

Article Ninth, Section 5.

Trustee, then and in every such case the Telephone Company and the Trustee shall be restored to their former position and rights hereunder in respect of the trust estate, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

Section 5. If one or more of the events of default shall happen and shall be continuing, the Trustee may, and upon the written request of the holders of not less than 25% in amount of the bonds hereby secured, and upon being indemnified as hereinafter provided, shall, with or without entry, personally or by attorney, in its discretion, sell to the highest bidder all and singular the trust estate, property and premises, rights, franchises and interest and appurtenances and either real and personal property of every kind, and all right, title, interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall have been requested by the holders of a majority in amount of the bonds hereby secured, then outstanding, in which case the sale shall be made in such parcels as shall be specified in such request, or unless such sale as an entirety is impracticable by reason of some statute or some other cause, which sale or sales shall be made at public auction, at such place in the City of New York in the State of New York, or at such other place as may be required by law, at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or proceed to protect and enforce its rights and the rights of the holders of bonds secured by this indenture, by a suit or suits at law or in equity, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other proper legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interests of the holders of the bonds hereby secured. In case the Trustee shall proceed by suit or suits at law or in equity for the foreclosure of this indenture, as above provided, the said Trustee shall be entitled to have the mortgaged and pledged property, rights and franchises, of every description hereby mortgaged and pledged or intended so to be, sold at judicial sale under the order of any court or courts of competent jurisdiction, for or toward the satisfaction of the principal or interest or both due and owing to the holders of the bonds and coupons then outstanding, issued under or entitled to the benefit of the security of this indenture, and for the enforcement of the rights, liens and securities of the Trustee and the holders of such bonds and coupons, and shall be entitled, pending any such suit or proceeding, to a receivership of all the property, rights and franchises subject to the lien hereof, and all the tolls, earnings, revenues, issues, profits and income thereof.

Upon the happening of one or more of the events of default and the

commencement thereafter of judicial proceedings to enforce any legal or equitable remedy under this indenture, all moneys held by the Trustee hereunder shall be deemed to be held without distinction as between any of the amounts constituting such moneys, for the sole purpose of paying the principal of and interest upon the bonds secured by this indenture, and upon any sale, whether under the power of sale herein contained or pursuant to judicial proceedings, shall be applied as provided in Section 10 of this Article Ninth.

Section 6. Notice of any such sale pursuant to any provisions of this indenture, shall state the time when, and the place where, the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale, in a newspaper published in the Borough of Manhattan, City of New York, and in a newspaper published in the City of Philadelphia, Pennsylvania, and in such other manner as may be required by law.

Section 7. From time to time the Trustee may adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, the Trustee may make such sale at the time and place to which the same shall be so adjourned.

Section 8. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds of conveyance of the property and franchises sold; and the Trustee and its successors are hereby appointed the true and lawful attorney and attorneys, irrevocable, of the Telephone Company, in its name and stead, to make all necessary deeds and conveyances of the property thus sold; and for that purpose it and they may execute all necessary deeds and instruments of assignment and transfer, the Telephone Company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Telephone Company shall, if so requested by the Trustee, ratify such sale by executing and delivering to the Trustee or to such purchaser or purchasers as may be designated in such request, any such instruments as, in the judgment of the Trustee, may be advisable.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale herein granted, or pursuant to judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Telephone Company, in and to the premises and property so sold, and shall be a perpetual bar both at law and in equity against the Telephone Company, its successors and assigns, and against any and all persons claiming or

Article Ninth, Sections 9 and 10.

to claim the premises and property sold, or any part thereof, from, through or under the Telephone Company, its successors or assigns.

The receipt of the Trustee or of the Court officer conducting any such sale shall be full and sufficient discharge to any purchaser of the property or any part thereof sold as aforesaid for the purchase money; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, mis-application or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 9. In case of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Section 10. The purchase money, proceeds and avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee as part of the trust estate, shall be applied as follows:

First, to the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee in managing and maintaining the property hereby conveyed, and to the payment of all taxes, assessments or liens prior to the lien of this indenture, except any taxes, assessments, or other superior liens to which said sale shall have been made subject.

Second, to the payment of the whole amount then owing or unpaid upon the bonds and coupons hereby secured for principal and interest, with interest on the principal and the overdue installments of interest at the same rate or rates respectively as were borne by the respective bonds; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of Section 1 of this Article Ninth. Such payments shall be made on the date fixed therefor by the Trustee, upon presentation of the several bonds and coupons and stamping thereon the amount paid, if such bonds and coupons be only partly paid, and upon surrender thereof if fully paid.

Third, the payment over of the surplus, if any, to the Telephone Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Section 11. Upon any sale as aforesaid, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any bonds issued hereunder and then outstanding, and any matured and unpaid interest obligations thereon, by presenting the same so that there may be credited, as paid thereon, the sums payable out of the net proceeds of such sale to the holders of such bonds and such interest obligations, as his ratable share of such net proceeds, after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, compensations and other charges; and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the bonds and coupons so turned in, and at any such sale the Trustee or any bondholders may bid for and purchase such property, may make payment on account thereof as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

Section 12. The Telephone Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force; nor will it claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the property hereby mortgaged or conveyed or pledged, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right conferred by any statute to redeem the property so sold, or any part thereof, nor will it after such sale, if at the time of such sale it shall be in possession of the property so sold, claim or exercise any right under any law whatever to retain possession thereof, or to collect, receive or have the benefit of any rent, issues or profits thereof, for or during any subsequent period of redemption provided for by any law; and it hereby expressly waives all benefit and advantage of such law or laws and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Section 13. The Telephone Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of ninety days, or (2) in

Article Ninth, Section 13.

case default shall be made in the payment of the principal of any such bond or bonds when the same shall become payable, whether upon the maturity of said bonds, or upon declaration or otherwise, then, upon demand of the Trustee, the Telephone Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest upon the overdue principal and installments of interest at the same rates respectively as were borne by the respective bonds whereof the principal or installments of interest shall be overdue; and in case the Telephone Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as the trustee of an express trust, shall be entitled to recover judgment against the Telephone Company for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien hereof; and in case of a sale of the mortgaged or pledged property or any part thereof, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon any and all of the bonds and coupons then outstanding hereunder for the benefit of the holders thereof, and shall be entitled to sue for and recover judgment for any portion of the said debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon property subject to the lien of this indenture, or upon any other property, shall in any manner, or to any extent, affect the lien of this indenture upon the property, or any part thereof, subject to this indenture, or any lien, rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this Section shall be applied by the Trustee, first, to the payment of the expenses, disbursements and compensation of the Trustee, its agents and attorneys, and, second, toward the payment of the amounts then due and unpaid upon such bonds and coupons, in respect of or for the benefit of which such moneys shall have been collected ratably, and without any preference or priority of any kind, except as provided in Section 1 of this Article Ninth, according to the amounts due and payable upon such

bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping thereon such payment, if only partially paid, and upon surrender thereof, if fully paid.

Section 14. Upon filing a bill in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this indenture, the Trustee shall be entitled to exercise the right of entry, and also any and all rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of any default as hereinbefore in Section 2 of this Article Ninth provided; and as a matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises hereby mortgaged, and of the earnings, revenue, rents, issues, profits and other income thereof and therefrom, with all such powers as the court or courts making such appointment shall confer; but notwithstanding the appointment of any receiver the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any stocks, bonds, cash and indebtedness pledged or deposited or provided to be pledged or deposited with the Trustee hereunder.

Section 15. No holder of any bond or coupon issued hereunder shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the appointment of a receiver, or for the execution of any trust hereunder, or for any other remedy hereunder, unless the holders of not less than 25% in amount of the bonds hereby secured and then outstanding shall have requested the Trustee in writing to take action in respect of the matter complained of, and shall have afforded to it a reasonable opportunity to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor unless also they shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; nor unless the Trustee shall have refused or neglected to act on such notice, request and indemnity, and such notification, request and offer of indemnity are hereby declared, in every such case at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or causes of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right, in any manner whatever, by his or their action, to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder except in the manner herein provided; and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Article Ninth, Sections 16 to 19.

Any rights of action under this indenture may be enforced by the Trustee without the possession of any of the bonds or coupons hereby secured or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its own name, and any recovery of judgment shall be for the ratable benefit of the holders of said bonds and coupons.

Section 16. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or to the holders of bonds issued hereunder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

Section 17. No delay or omission of the Trustee, or of any holder of bonds issued hereunder, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Article Ninth to the Trustee or to the bondholders, subject to the provisions of Section 15 of this Article Ninth, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders.

Section 18. The Trustee shall have power to institute and to maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security hereunder by any acts of the Telephone Company, or of others, in violation of this indenture, or unlawful or as the Trustee may be advised shall be necessary or expedient to preserve and to protect its interests and the interests of the bondholders in respect of the property subject to this indenture, and in respect of the income, earnings, issues and profits arising therefrom; including power to institute and to maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, compliance with or observance of such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the bondholders or of the Trustee.

Section 19. Anything in this indenture to the contrary notwithstanding, in case several series of bonds be outstanding under this indenture and an event of default shall have happened because of any default in the payment of the principal or interest or any sinking fund installment in respect of the bonds of any one or more of such series and not in respect of the bonds of one or more others, then whatever action in this Article Ninth of this indenture it is provided may or shall be taken upon such default (continuing as in this indenture provided) by or

Article Ninth, Section 20; Article Tenth, Sections 1 and 2

upon the request of the holders of a specified percentage of bonds outstanding, may be or shall be taken, in respect of the bonds of the series in respect of which such default shall have been made, by or upon the request of the holders of a majority in amount of the outstanding bonds of such series upon which such default shall have occurred.

Section 20. No recourse under or upon any obligation, covenant or agreement contained in this indenture or under or upon any indebtedness hereby secured or because of the creation thereof, shall be had against any incorporator, stockholder, officer or director of the Telephone Company or of any successor corporation, directly or through the Telephone Company or through a receiver or a trustee in bankruptcy, by the enforcement of any assessment or penalty, or by any legal or equitable proceedings, by virtue of any constitution, rule of law or otherwise; it being expressly agreed and understood that this indenture and all the bonds and obligations hereby secured are solely corporate obligations, and that no personal liability whatever does, or shall attach to or be incurred by the incorporators, stockholders, officers or directors of the Telephone Company or of any successor corporation or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture or in any of the bonds or coupons hereby secured or implied therefrom; and any and all personal liability of every name and nature, either at common law or in equity, or created by statute or constitution, of every such incorporator, stockholder, officer or director on this indenture and on such bonds and coupons, is hereby expressly released and waived, as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and coupons hereby secured.

ARTICLE TENTH

Evidence of Rights of Bondholders.

Section 1. Any request or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and may be received by the Trustee as conclusive if made in the manner provided in this Article Tenth.

Section 2. The fact and date of the execution by any person of such request, instrument or other writing may be proved by the certificate of any notary public, or other officer of any jurisdiction authorized by the laws thereof to take acknowledgments of deeds to be recorded

in any state within the United States, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution.

Section 3. The aggregate amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the distinctive numbers of such bonds and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, banker or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it, the bonds therein described, or such facts may be proved by the certificate or affidavit of the person executing such request or other instrument as a bondholder, if any such certificate or instrument shall be deemed by the Trustee to be satisfactory. The fact and date of execution of any request or other instrument, and the amount and numbers of coupon bonds held by the person so executing such request or other instrument, may also be proved in any other manner which the Trustee may deem sufficient.

The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

ARTICLE ELEVENTH

Concerning the Trustee.

Section 1. The Trustee, for itself and its successors, accepts the trusts of this indenture and agrees to execute them, but only upon the following additional terms and conditions, to which the Telephone Company and the holders of the bonds hereby secured agree, to wit:

(a) The Trustee shall be under no obligation to see to the recording, registry or filing of this indenture, but the Telephone Company covenants that it will with all convenient speed cause this indenture to be duly recorded as a mortgage and will do all other things requisite to preserve, protect and continue the lien hereof; and the Trustee may authenticate and deliver bonds before any such recording, registry or filing.

(b) The Trustee shall be entitled to reasonable compensation (which shall not be limited to the compensation of trustees of any express trust as provided by law) for all services rendered by it in the case of the trusts hereby created, and shall have a lien upon the trust estate under this indenture, prior to the rights of the holders of the bonds secured hereby, for such compensation and for its reasonable expenses and counsel fees. The Telephone Company agrees to pay such compensation, as well as all expenses necessarily incurred or disbursed by the Trustee

hereunder, from time to time on request of the Trustee, and to indemnify the Trustee against any liability or damages incurred or sustained by it under this indenture; and the Trustee shall have a lien upon the trust estate under this indenture prior to the rights and claims of the holders of the bonds secured hereby, for any such liability or damage and the reimbursement thereof.

(c) The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine and to have been signed by the proper party or parties, and any action taken by the Trustee pursuant to this indenture upon any notice, request, authority or consent of any person who, at the time of making such request or giving such authority or consent is the owner of any bonds secured hereby, shall be conclusive and binding upon all future owners of the same bond and all bonds issued in exchange therefor or in place thereof.

(d) The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor for the exercise of any discretion or power hereunder, nor for anything whatever in connection with this trust, except wilful misconduct or gross negligence; nor shall the Trustee be accountable for the use of any bonds authenticated or delivered by the Trustee hereunder or any of the proceeds of such bonds. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it indemnity satisfactory to it against such expense or liability. The Trustee shall not be required to take notice of any default under this indenture and for all purposes it conclusively may assume that there has been no default under this indenture, unless and until notified in writing of such default by the holders of at least 25% in amount of the bonds hereby secured then outstanding, nor shall the Trustee be required to take any action in respect of any default unless requested to take such action in respect thereof by a writing signed by the holders of not less than 25% in amount of the bonds hereby secured then outstanding, and tendered indemnity satisfactory to it as aforesaid; but the foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power by any provision of this indenture given to the Trustee to take action in respect of any default, without such notice or request from the bondholders. Except as herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a bondholder unless or until his bonds are

Article Eleventh, Section 1.

submitted to the Trustee for inspection, if required, and his title, if disputed, established to the satisfaction of the Trustee.

(e) The Trustee may, at the expense of the Telephone Company, advise with counsel, and any action under this indenture taken or suffered in good faith by it in accordance with the opinion of such counsel shall constitute full protection to the Trustee.

(f) The Trustee may perform its powers and duties by or through, and may select and employ in and about the execution of this trust, attorneys, agents and servants whose reasonable compensation shall be paid by the Telephone Company, and in default of such payment shall be a charge upon the trust estate and the proceeds thereof, paramount to the rights and claims of the holders of the bonds hereby secured.

(g) It shall be no part of the duty of the Trustee to see to the insurance of any property hereby conveyed or assigned, or to effect such an insurance, or to see to the payment of any tax, assessment or other governmental charge which may be levied upon or imposed against it or against the Telephone Company, or against the property hereby mortgaged, or against the owners of the said bonds, or, except as in this indenture provided, to see to the performance or observance of any of the covenants or agreements hereof on the part of the Telephone Company.

(h) On any moneys held by the Trustee under any provision of this indenture, including any moneys in the sinking fund, the Trustee shall, until it is required to pay out the same under the provisions of this indenture, allow the Telephone Company interest at such rate, if any, as is customarily allowed by it on similar deposits. So long as there shall exist no default in the payment of the principal or interest of the bonds outstanding hereunder, all interest allowed on any such moneys shall be paid from time to time to the Telephone Company, or upon its order, signed by its president or any vice president or treasurer.

(i) The recitals of facts and the covenants and agreements in this indenture and in said bonds contained shall be taken as made by the Telephone Company alone, and shall not be construed as made by or as imposing any obligation or liability upon the Trustee.

(j) The Trustee shall not be responsible for the execution or validity hereof, or of the bonds issued hereunder or intended to be secured hereby, nor for the sufficiency of the security provided herein.

(k) The Trustee may become the owner of bonds and coupons secured hereby with the same rights it would have if it were not Trustee.

(l) The Trustee shall not be individually liable for any debt contracted by it or for the expenses of operating the business of the Telephone Company or for damages to person or property or for salaries

or for nonfulfillment of contracts or for any other torts, obligations and liabilities arising during any period wherein the Trustee shall manage the trust property, or any part thereof, upon entry, as aforesaid or otherwise, and the trust estate is hereby charged with a first and paramount lien in favor of the Trustee for its security and indemnification against any such liability.

(m) In all cases where this indenture does not make other express provision as to the evidence upon which the Trustee may act or refrain from acting, the Trustee shall be protected in acting or refraining from acting under any provision of this indenture, in reliance upon a certificate as to the existence or non-existence of any fact or facts, signed by the President or a Vice President of the Telephone Company and by its Treasurer or Secretary or Assistant Secretary, and sealed with its corporate seal.

Section 2. The Trustee may resign and be discharged of the trusts created by this indenture by giving written notice thereof to the Telephone Company, specifying the date when such resignation shall take effect, and by publishing such notice at least once a week for four successive weeks in two newspapers published in the Borough of Manhattan, City of New York; and such resignation shall take effect on the date specified in such notice.

The Trustee may be removed at any time by an instrument in writing under the hands of the holders of three-fourths in amount of the bonds hereby secured then outstanding.

Section 3. In case at any time the Trustee, or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting a successor may be appointed by the holders of a majority in amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, that in case at any time there shall be a vacancy in the office of trustee hereunder the Telephone Company by an instrument executed by order of its Board of Directors may appoint a trustee which shall act until a successor trustee shall be appointed by the bondholders as herein authorized. After any such appointment by the Telephone Company it shall publish notice thereof at least once a week for four successive weeks in two newspapers published in the Borough of Manhattan, City of New York, and any Trustee so appointed by the Telephone Company shall immediately and without further act be superseded by the trustee, appointed in the manner above provided by the holders of a majority in amount of the bonds then outstanding hereunder, if such appointment by such bondholders be made prior to the expiration of one year after the completion of such publication of notice. Any new trustee appointed hereunder shall execute an instrument accepting

Article Eleventh, Section 4.

such appointment hereunder and deliver one counterpart thereof to the Telephone Company and one counterpart thereof to the Trustee last in office, and thereupon such new trustee without further act, deed or conveyance shall become vested with all the estates, properties, powers and trusts of its predecessors in the trusts hereunder, with like effect as if originally named as trustee herein; but nevertheless, upon the written request of the successor trustee or of the Telephone Company, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver any other property and money held by such trustee to the successor trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Telephone Company be required by any new trustee for more fully and certainly vesting in and confirming to it such estates, rights, powers and duties, then, any and all such deeds, conveyances and instruments in writing, shall, on request of said new trustee, be made, executed, acknowledged and delivered by the Telephone Company.

Every such successor trustee appointed in place of the party of the second part hereto or its successor in the trust, shall be a bank or trust company having an office in the Borough of Manhattan, City of New York, in good standing and having a capital and surplus aggregating five million dollars if there be such a bank or trust company qualified, able and willing to accept the trusts upon reasonable or customary terms.

Section 4. Any company into which the Trustee may be merged or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Trustee shall be a party, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding, provided such company shall be a corporation organized under the laws of the State of New York and shall maintain an office in the Borough of Manhattan in the City of New York. In case any of the bonds issuable under this indenture shall have been authenticated but not delivered, any such successor trustee may adopt the certificate of authentication of National Trust Company of New York or of any successor to it as trustee hereunder, and deliver the same so authenticated, and in case any of the bonds issuable hereunder shall not have been authenticated any successor trustee may authenticate such bonds in the name of such successor trustee and in all such cases such authentication shall have the full force and effect which anywhere in said bonds or in this indenture it is provided that authentication of the Trustee shall have.

Article Twelfth; Article Thirteenth, Section 1.

ARTICLE TWELFTH

Supplemental Indentures.

Section 1. The Telephone Company, when authorized by resolution of its Board of Directors, and the Trustee, from time to time and at any time, may enter into an indenture or indentures supplemental hereto and which thereafter shall form a part hereof, for any one or more of the following purposes:

(a) to convey, transfer and assign to the Trustee and to subject to the lien of this indenture, with the same force and effect as though specifically mentioned in the granting clause hereof, additional property then owned by the Telephone Company, acquired by it through consolidation, merger, by purchase, or otherwise;

(b) to specify and state the mortgage indebtedness, and the amount thereof of any company which hereafter shall be consolidated with or merged into, or whose property hereafter shall be acquired by, the Telephone Company, which indebtedness, if secured by mortgage on property made subject to the lien of this indenture, and if prior to the lien of the bonds issued hereunder, is to be regarded as forming a part of the underlying bonds of the Telephone Company, to retire which, at or before maturity, bonds may be issued as provided in Section 4 of Article Second hereof;

(c) to add to the limitations on the authorized amount, date of maturity, issue and purposes of issue of bonds hereunder or of any series of bonds hereunder, other limitations to be thereafter observed;

(d) to evidence the succession of another corporation to the Telephone Company, or successive successions, and the assumption by a successor corporation of the covenants and obligations of the Telephone Company under this indenture;

(e) to make such provision in regard to matters or questions arising under this indenture as may be necessary or desirable and not inconsistent with this indenture.

Section 2. The Trustee is hereby authorized to join with the Telephone Company in the execution of any such supplemental indenture, to make the further agreements and stipulations which may be therein contained, and to accept the conveyance, transfer and assignment of any such property thereunder.

ARTICLE THIRTEENTH

Miscellaneous Provisions.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Telephone Company, shall bind, and inure to the benefit of, its successors and assigns, whether so expressed or not.

Article Thirteenth, Sections 2 to 6.

Section 2. Nothing in this indenture expressed or implied is intended or shall be construed to give to any person or corporation other than the Telephone Company, the Trustee and the holders of the bonds and interest obligations hereby secured, any legal or equitable right, remedy or claim under or in respect of this indenture or any covenant condition or provision herein contained. All its covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Telephone Company, the Trustee and the holders of the bonds hereby secured.

Section 3. For the purpose of facilitating the record hereof, this indenture may be executed in any number of counterparts, each of which shall be and shall be taken to be an original and all collectively but one instrument.

Section 4. Any marginal notes hereon are no part of this indenture and shall not be deemed to affect the meaning or construction of any of its provisions.

Section 5.[3] The Telephone Company does hereby constitute and appoint Winfield S. Penn to be its attorney, for it and in its name, and as and for its corporate act and deed, to acknowledge this indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

Section 6. The Trustee does hereby constitute and appoint Clarence W. Tower to be its attorney, for it and in its name, and as and for its corporate act and deed, to acknowledge this indenture, before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In witness whereof the parties hereto have caused their corporate seals to be hereunto affixed and their Presidents or Vice-Presidents, under and by the authority vested in them, have hereto affixed their signatures, and their Secretaries or Assistant Secretaries have duly attested the execution hereof, in the City of New York, the 10th day of October, 1925.

The Telephone Company of America,

By (Sd.) L. H. Bell,
President.

[Seal]

Attest:

(Sd.) Winfield S. Penn,
Secretary.

[3] These sections 5 and 6 are inserted merely to comply with Pennsylvania requirements.

Sealed and delivered by The Telephone Company of America in the presence of

(Sd.) John H. Alexander,
(Sd.) Robert V. Hamilton.

National Trust Company,
By (Sd.) H. F. Wall,
Vice-President.

[Seal]

Attest:

(Sd.) Clarence W. Tower,
Assistant Secretary.

Sealed and delivered by National Trust Company in the presence of

(Sd.) H. A. Arthur,
(Sd.) P. H. Morton.

CERTIFICATE OF RESIDENCE

National Trust Company, Mortgagee and Trustee within named, hereby certifies that its precise residence is No. 200 Wall Street, in the Borough of Manhattan, the City of New York, State of New York.

National Trust Company,
By (Sd.) H. F. Wall,
Vice-President.

[acknowledgments]

APPENDIX II

FORM OF EQUIPMENT TRUST
(PHILADELPHIA PLAN)

SOUTH COAST RAILWAY EQUIPMENT TRUST, SERIES D

AGREEMENT

Dated July 1, 1924

L. C. LOTT

and

J. O. CARR

with Vendors

NATIONAL TRUST COMPANY

and Trustee

SOUTH COAST RAILWAY COMPANY

AGREEMENT, dated this 1st day of July, 1924, by and between L. C. LOTT and J. O. CARR, hereinafter called the "Vendors," residing respectively in the Borough of Brooklyn, City of New York, N. Y., and the City of New Rochelle, N. Y., of the first part;

NATIONAL TRUST COMPANY, hereinafter called the "Trustee," a corporation created and existing under the laws of the State of New York, having its principal office at No. 200 Wall Street, Borough of Manhattan, City of New York, N. Y., of the second part, and

SOUTH COAST RAILWAY COMPANY, hereinafter called the "Railway Company," a corporation of the State of Florida, of the third part.

WHEREAS the Railway Company desires to obtain additional rolling stock in order that traffic over its lines may be properly transported, and it has been deemed expedient to make provision therefor through the medium of an equipment trust; and

WHEREAS the Vendors, for the purposes of said trust, have entered into or are about to enter into contracts for the manufacture and purchase of the following amount of such rolling stock (hereinafter called, collectively, the "equipment") at the cost of approximately $2,387,400 viz.:

20 mountain type locomotives,
5 switching locomotives,
3 passenger coaches,
200 steel underframe ventilated box cars,
20 caboose cars,
100 wood underframe ballast cars; and

WHEREAS the title to said equipment, contemporaneously with the delivery thereof by the several manufacturers to the Vendors, is to be vested in the Trustee and is to be retained by the Trustee until transferred under the provisions of a lease thereof to be made by the Trustee to the Railway Company as hereinafter provided; and

WHEREAS the equipment trust share certificates to be issued as provided in this agreement are to be sold, and the net proceeds of such sale are to be applied to the payment *pro tanto* of the cost of the said delivered equipment, the remainder of such cost to be discharged out of advance rentals to be paid by the Railway Company under the terms of said lease of such equipment to be entered into by the Railway Company as hereinafter provided;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in order to carry the foregoing purposes into effect, and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

FIRST

The Vendors, as speedily as may be, will cause to be built or acquired the equipment hereinabove specified, costing an aggregate of approximately $2,387,400, and thereupon will sell and deliver said equipment or cause said equipment to be sold and delivered to the Trustee as trustee, as hereinafter set forth, for the holders of the share certificates issued under this agreement as hereinafter provided.

Promptly upon the execution of this agreement, the Vendors will deposit or cause to be deposited with the Trustee or to its credit as Trustee hereunder with such banks, bankers or trust companies doing business in the City of New York as may be designated by the Vendors and approved by the President or a Vice-President of the Trustee, in cash, the net proceeds of the sale of the share certificates issuable as hereinafter provided, and at the same time the Railway Company will deposit with the Trustee (or, in case of the designation of another depositary as aforesaid, with such depositary, likewise to the credit of the Trustee) in discharge *pro tanto* of advance rental payable by the Railway Company to the Trustee under the aforesaid equipment lease, such additional amount in cash as will make the total sum deposited equal to $1,875,000. Thereupon, without waiting for the recording, registration or filing of this agreement or of any lease of or other instrument respecting the equipment subjected to this agreement, the Trustee will issue and deliver to or upon the written order of the Vendors, share certificates, to be designated "South Coast Railway Equipment Trust Certificates, Series D," and to be substantially in the form set forth in Article Second of this agreement, of the aggregate par value of $1,875,000.

Thereafter, from time to time, when and as any of the equipment shall have been sold and delivered to the Trustee, and provided that a lease

of such delivered equipment shall have been made to the Railway Company, all as in this agreement provided, the Trustee shall pay the Vendors or upon their order out of the said sum of $1,875,000 deposited with or to the credit of the Trustee as aforesaid, an amount not exceeding eighty per cent (80%) of the cost of the equipment so delivered to the Trustee, as part payment of such cost; such cost to be conclusively established by the certificate in writing of the Vendors delivered to the Trustee prior to or contemporaneously with such payment. At or prior to the time of the delivery of such certificate of cost, there shall also be delivered to the Trustee (1) proper bills of sale to the Trustee of the delivered equipment, (2) a certificate in writing of counsel for the Vendors (who may be counsel for the Railway Company) to the effect that the Trustee's title to such equipment under such bills of sale is perfect and unencumbered, and (3) a certificate in writing of the Vendors that the metal plates required by Article 5 of the form of lease hereinafter referred to, have been securely fastened on each side of the delivered equipment.

Delivery of the equipment shall be made to the Trustee by delivering the same to the Railway Company for account of the Trustee, f. o. b. tracks acceptable to the Railway Company against receipts to be signed in duplicate by a Vice-President of the Railway Company, indicating such delivery for the account of the Trustee. One of such duplicate receipts shall be delivered to the Trustee with the bills of sale and certificates in this Article provided for.

The Railway Company covenants that contemporaneously with such payment by the Trustee, the Railway Company will pay to the Trustee or deposit to the credit of the Trustee as aforesaid, as advance rental, as provided in said lease, amounts equal to the remainder of the cost of the delivered equipment, being not less than 20% of said cost. Thereupon the Trustee will pay to the Vendors, by the use of such advance rental, the portion of the purchase price of the delivered equipment not discharged by the payment above described out of the moneys deposited with or to the credit of the Trustee, as aforesaid, upon the delivery of the share certificates.

SECOND

The share certificates (hereinafter termed "certificates") to be executed and delivered by the Trustee as in Article First of this agreement provided, shall not exceed the aggregate par value of $1,875,000. Each certificate shall be of the par value of $1,000, and shall be separately numbered. Certificates of the aggregate par value of one-fifteenth of the total authorized issue shall be due and payable on the 1st day of July, 1925, and for the aggregate par value of one-fifteenth of the total authorized issue on the 1st day of July in each of the succeeding years to and including July 1, 1939, so that $125,000 aggregate par value of the

certificates shall become payable on July 1st of each year during said period. The certificates shall be in substantially the following form, the par value, the number, and the date of payment, respectively, being specified appropriately:

SOUTH COAST RAILWAY EQUIPMENT TRUST

SERIES D

No. $1,000

FIVE PER CENT. EQUIPMENT TRUST GOLD CERTIFICATE

Dated July 1, 1924. Payable July 1, 19 .

Authorized issue 1,875 shares of $1,000 each.

THIS IS TO CERTIFY that the bearer hereof, or, if this certificate be registered as hereinafter provided, the registered holder hereof, is entitled to a share of the par value of One thousand dollars in SOUTH COAST RAILWAY EQUIPMENT TRUST, SERIES D, in accordance with the provisions of a certain agreement bearing date the 1st day of July, 1924, between L. C. Lott and J. O. Carr, the undersigned National Trust Company, and South Coast Railway Company (hereinafter called "the Railway Company"); and as hereinafter more fully provided, is entitled to the payment of said sum on the 1st day of July, 19 , in gold coin of the United States of America of the present standard of weight and fineness, upon surrender of this certificate to the undersigned Trustee, at its principal office, in the Borough of Manhattan, City and State of New York, and to payment in like gold coin, until and including said last mentioned date, of dividends on said sum at the rate of 5% per annum, semi-annually on the 1st day of January and the 1st day of July of each year, according to the tenor of the dividend warrants hereto annexed, upon presentation and surrender of such warrants as severally they mature, to the undersigned at its said office; such payment of the par value of this certificate and of the dividends thereon to be made only from and out of rentals when received by the undersigned pursuant to the provisions of said agreement dated July 1, 1924, and of the lease to the Railway Company of the railroad equipment described in said agreement, or from and out of any moneys otherwise received by the Trustee and applicable thereto under the provisions of said agreement for such payment; in and by which lease the Railway Company agrees to maintain said equipment and to pay to the undersigned, as rental therefor, an amount sufficient to discharge all taxes and other governmental charges (other than any income tax), the expenses of the trust, the amounts of the dividends, and the par value of said certificates, when payable, respectively, as in said agreement and lease provided.

This certificate is one of the share certificates of the aggregate par value of $1,875,000 issued under said agreement dated July 1, 1924. For a full statement of the rights and obligations of the Railway Company, the duties of the undersigned, the rights of the holders of the certificates and the provisions in said agreement dated July 1, 1924, in respect of the deposit with the Trustee or with banking depositaries to its credit of moneys applicable toward the payment of the cost of the said equipment pending its construction and delivery to the Trustee, reference is made to the said agreement dated July 1, 1924, on file in the office of the undersigned, and to the lease therein provided for.

This certificate, unless registered in the name of the holder, shall pass by delivery; but at any time it may be registered in the name of the holder, upon presentation for the notation of such registration hereon, at the office of the undersigned in the Borough of Manhattan, City of New York. Thereafter title hereto shall pass only by transfer, noted hereon, at the said office, unless and until a transfer to bearer shall have been so registered and noted hereon. Such registration in the name of the holder shall not affect the transferability of the dividend warrants hereto annexed, title to which shall pass by delivery merely.

Every taker and holder of this certificate and of the attached dividend warrants, by accepting the same, agrees with the undersigned and with every subsequent taker and holder hereof and thereof, that this certificate, unless registered in the name of the holder, and that such warrants, may be negotiated by delivery by any person having possession of the same, respectively, howsoever such possession may have been acquired, and that any holder who shall have taken this certificate, unless so registered, or any such warrant from any person for value and without notice of prior defenses or equities enforcible against such person, shall thereby acquire absolute title hereto and thereto, as the case may be, free of any defenses enforcible against or equities or claims of ownership of any prior holder. Every taker and holder of this certificate and the attached dividend warrants hereby further agrees that the undersigned may treat the bearer of this certificate, unless registered in the name of the holder, and the attached warrants as the absolute owner hereof and thereof, as the case may be, for all purposes, and that the undersigned shall not be affected by any notice to the contrary.

Neither this certificate nor the dividend warrants attached hereto shall be deemed in any wise the promise to pay of the undersigned.

In witness whereof, National Trust Company, as Trustee under the aforesaid agreement dated July 1, 1924, has caused this certificate to be executed in its behalf by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or an Assistant Secretary, and dividend warrants bearing the

engraved facsimile signature of its Treasurer to be attached hereto.

Dated July 1, 1924.

NATIONAL TRUST COMPANY,
Trustee,

Attest:

By.....
President.

.....
Secretary.

The dividend warrants attached to said certificate shall read as follows, the blanks being appropriately filled in, viz.:

No. ..... $25.

Due to the bearer hereof, on the 1st day of 19 , on surrender hereof to the undersigned at its principal office, in the Borough of Manhattan, City and State of New York, Twenty-five Dollars, being the semi-annual dividend on certificate No. ..... of SOUTH COAST RAILWAY EQUIPMENT TRUST, Series D, payable only out of rentals, or other moneys applicable thereto, received by the undersigned under the agreement dated July 1, 1924, referred to in said certificate and as therein provided.

NATIONAL TRUST COMPANY,
Trustee,

By .....
Treasurer.

The facsimile signature of the Treasurer or other officer of the Trustee may be engraved or printed on the dividend warrants and may be used by the Trustee notwithstanding such person may have ceased to be such officer of the Trustee at the time of issuance of the certificates.

Pending the preparation of definitive certificates, the Trustee may issue temporary certificates, of any denomination or denominations, with or without dividend warrants, substantially in the form hereinabove recited but with changes appropriate for such temporary certificates. Such temporary certificates shall be exchangeable, without cost to the holder, for definitive certificates when prepared.

Any certificates with dividend warrants attached may be registered, as to the par value thereof, in the name of the owner, on the books of the Trustee in the Borough of Manhattan, City of New York, which registration shall be noted on the certificate, after which no transfer thereof shall be valid unless made on said books, until the certificate so registered shall have been transferred to bearer. Upon such transfer to bearer the certificate shall again become transferable by delivery, but it may again and from time to time be registered as before. The dividend warrants shall always be transferable by delivery.

The Trustee agrees to keep at its office in the Borough of Manhattan, City of New York, a register in which the holders of any such certificates may have the same registered as therein provided.

Anything to the contrary notwithstanding, the parties hereto may deem and treat the bearer of any unregistered certificate issued hereunder, and the bearer of any dividend warrant, as the absolute owner of such certificate or dividend warrant, as the case may be, for the purpose of receiving payment thereof, and for all other purposes, and shall be affected in no wise by any notice to the contrary. The parties hereto may deem and treat the person in whose name any certificate issued hereunder shall be registered, as hereinbefore provided, as the absolute owner of such certificate, for the purpose of receiving payment of or on account of the par value of the share or shares represented by such certificate, and for all other purposes, and all such payments so made to any such registered holder, or upon his order, shall be valid and effectual to satisfy and discharge the amount payable upon such certificate to the extent of the sum or sums so paid.

The Railway Company covenants that it will make payment of the rentals on account of the equipment as provided in this agreement and in the lease herein referred to, notwithstanding any of the certificates and dividend warrants shall have been acquired by the Railway Company or shall not have been presented for payment. The Trustee having received the rentals applicable to the payment of the certificates and dividend warrants, shall make payments in discharge of the same as therein provided, and thereupon shall cancel the certificates and dividend warrants so paid, and no certificates or dividend warrants in substitution therefor shall be issued. Neither the Trustee nor the Railway Company shall extend or consent to the extension of the time of payment of the par value of any certificate or of any dividend warrant, and if such extension be made, such certificate or such dividend warrant so extended shall be subject to the prior payment in full of the par value of the other certificates and dividend warrants whose payment shall not have been extended, whether such certificates and dividend warrants be then matured or unmatured.

In case any certificate or dividend warrant issued hereunder shall become multilated, or shall be lost, stolen or destroyed, the Trustee may issue a new certificate or dividend warrant in lieu of the certificate or dividend warrant thus mutiliated, stolen, lost or destroyed; but the Trustee shall not be obligated to issue such new certificate or dividend warrant unless it shall have received evidence satisfactory to it of the mutilation, loss, theft or destruction, nor, unless, if mutilated, the mutilated certificate or dividend warrant shall be delivered to it for cancellation, nor unless the Trustee shall be secured against loss or damage, in such

manner and form as it may deem proper; and the Trustee may charge for the issuance of such new certificate or dividend warrant, an amount sufficient to reimburse it for the expense thereby caused.

THIRD

The Railway Company covenants that it will lease from the Trustee, for a term ending July 1, 1939, all the equipment conveyed or caused to be conveyed to the Trustee by the Vendors. The lease instrument shall be substantially in the form hereto annexed.

The rentals in the lease provided to be paid to the Trustee by the Railway Company, in addition to the advance rentals specified in Article First of this agreement, shall be equal to the following amounts, at the times stated, respectively:

(1) Amounts sufficient to reimburse the expenses and pay the proper compensation of the Trustee in the administration of its trust under this agreement and under the lease; such amounts to be paid from time to time upon request of the Trustee;

(2) Amounts sufficient to pay and discharge any and all taxes, assessments, or other governmental charges (other than any income tax) upon the income or property of the trust under this agreement which the Trustee may be required to pay, or which by law may be deductible from the par value of the share certificates issued under this agreement, or from the dividends on such share certificates; payment of such amounts to be made to the Trustee from time to time and at such times as shall enable the Trustee to pay or discharge any such taxes, assessments, or other governmental charges when and as the same shall severally become payable;

(3) On the 1st day of January, and the 1st day of July, 1925, and on the same days in each year thereafter, until and including the 1st day of July, 1939, an amount which shall be equal to the semi-annual dividend of two and one-half per cent (payable on each of said dates, respectively) of the par value of the share certificates at the time outstanding; and

(4) On the 1st day of July, 1925, and on the same day in each year thereafter until and including the 1st day of July, 1939, the sum of $125,000, being the aggregate par value of the said share certificates payable according to their terms on each of said respective dates.

It being contemplated that all of said $1,875,000 of certificates shall be issued forthwith upon the deposit with the Trustee or to its credit as Trustee hereunder, of $1,875,000 in cash, as in Article First of this agreement provided, the Railway Company covenants that it will pay to the Trustee the said rentals when and as the same shall become due and payable, as in this agreement and in the said lease provided, notwithstanding any of such payments shall have become so due and pay-

able prior to the delivery under the lease to the Railway Company of any of the said equipment.

The aggregate amount of the said advance rentals to be paid by the Railway Company under said lease, shall be equal to the amount by which the cost of all said equipment delivered to the Trustee under this agreement shall exceed the net proceeds of the sale of the certificates issued under this agreement, notwithstanding such cost of such equipment shall exceed the approximate cost of $2,387,400 set forth in the recitals of this agreement.

The Railway Company covenants that it will not transfer, assign or encumber its interest in or under this agreement, or in or under any lease made as provided herein, or in or to any of such equipment, except subject hereto.

FOURTH

The Trustee covenants that all its interest and rights under this agreement and under the lease to be made by it to the Railway Company, as herein provided, and all its title to the equipment thereby leased to the Railway Company, and all the rentals of the said equipment received or collected by the Trustee from the Railway Company, as well as all proceeds of any subsequent lease or sale of the equipment which may be received by the Trustee, as hereinafter provided, and all other moneys or securities held by the Trustee hereunder, until applied or disposed of in accordance with the provisions of this agreement or such lease, including moneys deposited to its credit under the provisions of this agreement, are to be held and shall be held by the Trustee, IN TRUST, for the use and benefit of the holders of the certificates issued hereunder, ratably, according to the par value of their respective shares represented by said certificates, and to be disposed of by the Trustee in accordance with the provisions of this agreement.

The Trustee further covenants to enforce, as far as practicable (in the manner herein provided), for the use and benefit of the holders of the certificates, the performance of all and singular the terms, conditions and covenants of the lease, and to apply and distribute the rentals thereunder when and as the same shall be received, to and for the following purposes, and in the following order, to wit:

(1) To the payment of the expenses and proper compensation of the Trustee for its services under this agreement and the said lease;

(2) To the payment of any and all taxes or other governmental charges which the Trustee may be required by law to pay or deduct;

(3) To the payment of the dividend warrants attached to the certificates, when and as the same respectively shall become payable, subject to the provisions of Article Second hereof;

(4) To the payment of the par value of the certificates, when and as the same respectively shall become payable, subject to the provisions of Article Second hereof.

FIFTH

In case the Railway Company shall at any time make default in the payment of any part of the rental in the lease reserved, or shall fail to keep and perform any of the terms and covenants of the lease and any of its obligations under this agreement, the Trustee shall be entitled to enforce all the terms and stipulations of the lease, for the benefit of the holders of the certificates. In case the Trustee shall retake possession of the equipment, it either may hold, or may lease, or publicly or privately and for cash or upon credit may sell or dispose of said equipment, or any part thereof, as the Trustee in its discretion may deem most beneficial to the holders of the certificates, and as may be authorized by law. The proceeds of any such lease or sale or disposition, together with any insurance money or other moneys in the hands of the Trustee, including moneys deposited to its credit as aforesaid, after deducting the expenses and compensation of the Trustee, and any sums paid for insurance premiums, and all taxes which the Trustee may be required by law to pay in respect of the trust property or the certificates, or the dividends thereon, shall be applied by the Trustee to the payment, first of the dividend warrants then due, and next, of the par value of all the outstanding certificates, whether the same shall have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not sufficient, then *pro rata,* subject to the provisions of Article Second hereof.

SIXTH

The Trustee shall not be liable to any of the parties hereto, or to any of the holders of the certificates or warrants, for the delivery of any of the equipment, or for any defect therein, or in the title thereto of the Trustee, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation of the value thereof.

The Trustee may exercise its powers and perform its duties by or through such attorneys, agents, or servants as it shall appoint, and shall be answerable only for its own acts, negligence and defaults and not for the default or misconduct of any attorney, agent or servant selected by it with reasonable care; nor shall it be liable in any event for any acts except for its own negligence or defaults.

The Trustee shall not be under any obligation to take any action toward the execution or the enforcement of the trusts created by this agreement which in its opinion will be likely to involve it in expense or liability, unless one or more holders of the certificates issued hereunder shall furnish to the Trustee, as often as it may require, indemnity

satisfactory to the Trustee against such expense or liability; nor shall the Trustee be required to take notice of any default under this agreement, or in any lease provided for herein, or be deemed to have notice of any such default, unless notified in writing of such default by the holders of at least twenty-five per cent of the par value of the certificates then outstanding; but the foregoing provisions of this Article Sixth are intended only for the protection of the Trustee and shall not be construed to limit or to affect any discretion or power given to the Trustee by any provision of this agreement or of any lease, to determine whether or not it shall take action in respect of any default, or any power or discretion of the Trustee to take action in respect of any default without such notice or request from certificate holders.

The Trustee in its discretion may advise with legal counsel, to be selected and employed by it at the expense of the Railway Company, and anything done or suffered in good faith by the Trustee, in accordance with the opinion of counsel, shall be conclusive in favor of the Trustee as against the parties to this agreement and all holders of certificates issued hereunder.

The Trustee shall be under no duty or obligation to see to the recording, registration or filing of this agreement or of any lease of the equipment, or of any agreement or other instrument hereafter executed in respect of the equipment or parts thereof, or of any substituted or additional equipment subjected to this agreement or any such lease; but the Railway Company hereby agrees to file, record and register this agreement, in connection with the writing whereby the equipment is leased by the Trustee to the Railway Company, in each and every jurisdiction in which the lines of railroad of the Railway Company enter, and in any other jurisdictions as may be required by law in order to publish notice of and to protect the Trustee's title to the leased equipment and any replacements.

The Trustee shall not be responsible in any way for the recitals herein, or in any lease of the equipment contained, such recitals being made solely by the Railway Company, or for the validity hereof, or for any mistake of fact or law.

The Trustee shall be under no duty or obligation to see to the maintenance, repairing, or insuring of any of the equipment.

No holder of any certificate or warrant issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of the trusts hereby created, unless request in writing by the holders of not less than twenty-five per cent in amount of the then outstanding certificates shall have been made upon the Trustee as aforesaid, and indemnity satisfactory to it furnished, and unless after a reasonable time shall have elapsed for action by the Trustee upon such request, it declines to institute any proceedings pursuant thereto.

The Trustee shall not incur any liability to anybody in acting upon

any notice, request, consent, order, certificate, warrant, or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

The Railway Company agrees to pay the expenses and any stamp taxes or other taxes incident to the preparation, execution and issue of the trust certificates and dividend warrants to be issued hereunder, or incident to the preparation, execution, recording, registration and filing of this agreement and of the lease herein referred to, and of any instruments hereafter executed under the provisions hereof in respect of any of the equipment or any lease thereof, or any equipment or parts used to replace any of the equipment, or any sale or purchase of any equipment or parts.

The Trustee shall be reimbursed by the Railway Company for, and be indemnified by it against, any expense and any liability and damages which may be sustained by the Trustee hereunder.

In case of default under any lease, as therein provided, the expenses and compensation of the Trustee shall first be paid out of the proceeds of any sale of the equipment.

Any moneys received by the Trustee hereunder, or under any of the leases, shall be treated by it, until it is required to pay out the same in conformity herewith, as a special deposit, to be held by the Trustee for the purposes set forth in this agreement and in the lease to be made by the Trustee to the Railway Company, and the Railway Company shall be entitled, but only as below more fully provided, to such interest thereon as during that time the Trustee allows to similar depositors, *provided, however,* that on request of the Railway Company, such moneys shall be invested by the Trustee (until it is required to pay out the same in conformity herewith), in certificates of indebtedness, or other obligations of the United States, or in bonds, or notes of the City of New York issued in anticipation of the collection of taxes, or in bank acceptances. The Railway Company shall be entitled to receive any profit which may arise from the sale of such certificates of indebtedness or other obligations, bonds, notes, or bank acceptances, and shall reimburse the Trustee for any loss sustained in connection therewith; and the Trustee shall not be liable to any one for any loss so sustained. The certificates of the banks, bankers, or trust companies designated as depositaries under the provisions of this agreement, stating that they hold a stated amount subject to the order of the Trustee, shall be full protection to the Trustee for its action on the faith thereof; and the Trustee shall not be liable for any act or omission of any such depositary. Said banks, bankers, or trust companies shall be fully protected in paying said moneys so deposited with them, and any such interest, to or upon the order of the Trustee, and shall be under no obligation to see to the application thereof in accordance with the provisions of this agreement.

Interest allowed by the Trustee upon moneys received by it, income from investments made by the Trustee on request of the Railway Company in securities of the classes above specified, and interest allowed by any such bank, bankers, or trust companies upon moneys deposited with them to the credit of the Trustee, shall, so long as there shall be no default on the part of the Railway Company hereunder, or under said lease, be paid to the Railway Company by or upon the order of the Trustee; *provided, however,* that until all of the equipment hereinbefore specified shall have been delivered to the Trustee and leased to the Railway Company, all such interest shall be applied by the Trustee toward the payment of the dividend warrants as from time to time they fall due.

The Trustee may become the owner of certificates and warrants issued hereunder with the same rights which it would have if it were not Trustee.

If at any time the Trustee, or any successor to it in the trust hereby created, shall desire to divest itself of its title to the equipment and to terminate its duties and obligations and rights under this agreement and the certificates, it shall so notify the Railway Company in writing and the Railway Company shall thereupon designate in writing to the Trustee a national bank or a trust company qualified as below specified, to which may be assigned the entire right, title and interest of the Trustee in the equipment and in which may be vested the rights, powers, duties and obligations of the trust under this agreement and the certificates. Upon the transfer and delivery of all moneys and equipment held by the Trustee and the execution by the Trustee of such instruments of transfer as may be requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the Trustee shall be relieved of all the title, rights, powers, duties, obligations and immunities of the trust under this agreement and the certificates, and the same shall become vested in such successor trustee and every provision of this agreement applicable to the Trustee shall apply to such successor trustee with like effect as if originally named herein in the place and stead of the party of the second part. In the event that the Railway Company fails to designate such a successor trustee by instrument in writing delivered to the Trustee, within two weeks from the time of receiving such notice in writing from the Trustee, the Trustee may thereupon designate such successor trustee. The Railway Company will execute such writings recognizing the transfer of title as aforesaid, and all such instruments of further assurance or otherwise as may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the equipment.

Every successor trustee shall be a national bank or a trust company doing business in the Borough of Manhattan, City of New York, and having a capital and surplus of at least $5,000,000, if there be such national bank or trust company willing and able to accept the trusts upon reasonable and customary terms and duly qualified to act as such trustee.

SEVENTH

In the case of the death or inability to act of either of the Vendors, the other Vendor shall have and discharge all the powers of the Vendors. Any action taken by either of the Vendors shall have the same force and effect as if taken by both of them.

This agreement is simultaneously executed in several counterparts, each of which shall be deemed to be an original, and all collectively to be one and the same instrument.

This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, and the parties of the second and third parts have caused these presents to be signed in their behalf, respectively, and their corporate seals to be hereto affixed, as of the day and year first above written.

L. C. LOTT [L. S.]
J. O. CARR [L. S.]

Signed, sealed and delivered as to
L. C. Lott and J. O. Carr
in the presence of:
C. C. CLINTON
E. K. THOMAS

NATIONAL TRUST COMPANY

By H. F. WALL,
Vice-President.

Attest:

C. W. TOWER
Asst. Secretary.

[CORPORATE SEAL]

Signed, sealed and delivered as to
National Trust Company in the
presence of:
C. C. CLINTON
E. K. THOMAS

SOUTH COAST RAILWAY COMPANY

By WM. R. RHODES,
President.

Attest:

C. D. POST
Secretary.

[CORPORATE SEAL]

Signed, sealed and delivered as to
South Coast Railway Company
in the presence of:
C. C. CLINTON
E. K. THOMAS

[ACKNOWLEDGMENTS]

LEASE AGREEMENT

Dated July 1, 1924

NATIONAL TRUST COMPANY
Trustee

to

SOUTH COAST RAILWAY COMPANY

LEASE AGREEMENT made this first day of July, 1924, between

NATIONAL TRUST COMPANY, hereinafter called the "Trustee," a corporation created and existing under the laws of the State of New York, having its principal office at No. 200 Wall Street, in the Borough of Manhattan, City and State of New York, as Trustee under the Agreement dated July 1, 1924, hereinbelow more fully described, of the first part, and

SOUTH COAST RAILWAY COMPANY, hereinafter called the "Railway Company," a corporation of the State of Florida, of the second part

WHEREAS, under date of July 1, 1924, an Agreement creating an equipment trust, designated "South Coast Railway Equipment Trust, Series D," was entered into by and between L. C. Lott and J. O. Cair (therein and hereinafter termed the "Vendors"), the said National Trust Company, and the said South Coast Railway Company, and this lease is entered into as contemplated and provided for in said Agreement; and

WHEREAS, under the said Agreement dated July 1, 1924, as provided therein, there have been issued by the Trustee its certificates of shares in the said equipment trust, which certificates (hereinafter called the "share certificates") are of the aggregate par value of $1,875,000,

and bear date July 1, 1924, and mature serially in annual instalments of $125,000 par value (the first instalment being payable July 1, 1925, and the final instalment on July 1, 1939), and provide, among other things, for the payment of dividends on said certificates, from July 1, 1924, until the respective due dates of the certificates, at the rate of five per cent per annum, semi-annually on the first day of January and the first day of July of each year; and as further provided in said Agreement and also in the share certificates, the payment of the par value of the share certificates and the dividends thereon and of taxes (other than any income tax) and the Trustee's expenses and charges is to be made only out of moneys received by the Trustee from the Railway Company as lessee of the equipment described in said Agreement or from or out of any moneys otherwise received by the Trustee and applicable to such payment; and

WHEREAS in and by said Agreement dated July 1, 1924, it is provided that promptly upon the execution thereof there will be deposited with the Trustee or to its credit as Trustee under South Coast Railway Equipment Trust, Series D, with such banks, bankers or trust companies as may be designated by the vendors and approved by the President or a Vice-President of the Trustee, the sum of $1,875,000, and that thereafter from time to time, when and as any of the railroad equipment described therein shall have been sold and delivered to the Trustee, and provided that a lease of such delivered equipment shall have been made with the Railway Company in the form of this lease, the Trustee shall pay, out of said sum of $1,875,000, an amount not exceeding eighty per cent of the cost of the equipment so delivered to the Trustee, as part payment of such cost, and that contemporaneously with such payment by the Trustee the Railway Company will pay to the Trustee or deposit to its credit as said Trustee, as advance rental under this lease an amount equal to the remainder of the cost of the delivered equipment (being not less than twenty per cent. of the said cost), to be applied by the Trustee in payment of the portion of the purchase price of the delivered equipment not discharged by the payment out of the moneys deposited with or to the credit of the Trustee as aforesaid.

NOW, THEREFORE, in consideration of One Dollar to the Trustee in hand paid by the Railway Company, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and promises herein contained and in pursuance of said Agreement dated July 1, 1924, the parties hereto agree as follows:

1. The Trustee agrees that upon acquiring title, pursuant to the said Agreement dated July 1, 1924, to any and all of the railroad rolling stock described in the inventory hereto attached, the Trustee, as owner thereof, will deliver such rolling stock to the Railway Company

as lessee under this lease, and the Railway Company agrees to receive such rolling stock as such lessee.

2. The Trustee hereby agrees to lease, and by these presents does lease, to the Railway Company, from the date of the delivery thereof by the Trustee to the Railway Company, all of the said rolling stock (hereinafter termed the "leased equipment"), at the rental and upon the terms and conditions hereinafter set forth. Delivery of the equipment shall be deemed to be made to the Railway Company from time to time as delivery thereof is made to the Trustee under the said Agreement dated July 1, 1924.

Upon condition that the Railway Company shall make all the payments of rental herein agreed by it to be made to the Trustee as set forth in Article 3 hereof, the Trustee further agrees with the Railway Company (1) that when fully completed, but not before, such payment shall be applied and shall be treated as purchase money and as the full purchase price of the leased equipment; (2) that when the said payments shall have been made in full and the terms of this lease shall have been performed on its part by the Railway Company, then and not before, the title to all of the leased equipment and to all replacements thereof made hereunder shall vest in the Railway Company; and (3) that thereupon the Trustee will execute for record in public offices, such instrument or instruments in writing as reasonably shall be requested by the Railway Company in order then to make clear upon the public records the title of the Railway Company to all of the leased equipment and replacements thereof, under the laws of any jurisdiction.

The Trustee is not to be held liable on any warranty of title or quality, express or implied, and acceptance by the Railway Company of delivery of any of the leased equipment or any replacements thereof, under the terms of this lease, shall operate *ipso facto* as a conclusive acknowledgment on the part of the Railway Company that it is satisfied with the quality of said equipment thus delivered to it and with the Trustee's title thereto.

3. The Railway Company hereby agrees to accept, and hereby does accept, the lease of the leased equipment made to it by the Trustee as set forth in Article 2 of this lease, and covenants with the Trustee that it will pay to the Trustee, as rental for the use of the leased equipment and any and all replacements thereof, during the term and pursuant to the provisions hereof, sums sufficient to discharge and pay the following when and as the same shall become payable, viz.:

A. From time to time, as provided in said Agreement dated July 1, 1924, the Railway Company shall pay to the Trustee or deposit to its credit as Trustee under said Agreement dated July 1, 1924, with such banks, bankers or trust companies as may be designated by the Vendors

and approved by the President or a Vice-President of the Trustee, as advance rental under this lease, sums which in the aggregate shall be equal to the difference between the total cost of the leased equipment and the portion of such cost to be provided out of the net proceeds of sale of the share certificates to be issued as set forth in said Agreement; the intention being that when all of the leased equipment shall have been delivered to the Trustee, the Railway Company shall have paid or shall pay to the Trustee (or, shall have deposited or shall deposit to the credit of the Trustee as aforesaid) as advance rental under this lease, a sum equal to the amount by which the entire cost of the leased equipment exceeds the said net proceeds of the sale of the aforesaid share certificates. The Railway Company agrees to pay such advance rental as follows:

(1) Promptly upon the execution of this lease, a sum which when added to the net proceeds of the sale of the share certificates paid or credited to the Trustee by the Vendors, will make the total sum deposited with or to the credit of the Trustee equal to $1,875,000;

(2) Upon delivery of any of the equipment to the Trustee and part payment therefor by the Trustee out of deposited moneys, amounts equal to the remainder of the cost of such equipment, being not less than 20% of such cost.

B. In addition to said advance rental, the Railway Company shall pay to the Trustee, from time to time as below provided, as rental for the leased equipment and replacements, and whether or not at the time any thereof shall have been delivered to the Railway Company, the following:

(1) Amounts sufficient to reimburse the expenses and pay the proper compensation of the Trustee in the administration of its trust under the said Agreement dated July 1, 1924, and under this lease, and any other sums payable by the Railway Company under said indentures; such amounts to be paid from time to time upon request of the Trustee;

(2) Amounts sufficient to pay and discharge any and all taxes, assessments or other governmental charges (other than any income tax) upon the income or property of the trust under the said Agreement dated July 1, 1924, which the Trustee may be required to pay, or which by law may be deductible from the par value of the share certificates issued under said Agreement dated July 1, 1924, or from the dividends on said share certificates; the payment of such amounts to be made to the Trustee from time to time and at such times as shall enable the Trustee to pay or discharge any such taxes, assessments or other governmental charges when and as the same severally shall become payable;

(3) On the first day of January and the first day of July, 1925, and on the same days in each year thereafter until and including the first day of July, 1939, an amount which shall be equal to the semi-

annual dividend of two and one-half per cent (payable on each of said dates, respectively) of the par value of the said share certificates at the time outstanding; and

(4) On the first day of July, 1925, and on the same day in each year thereafter until and including the first day of July, 1939, the sum of $125,000, being the aggregate par value of the said share certificates payable according to their terms on each of said respective dates.

4. Until it shall have fulfilled all its obligations under this lease, the Railway Company, at its own cost and with due diligence and as promptly as may be practicable under the circumstances, shall and will replace any and all of the leased equipment (and, as well, any equipment substituted therefor as in this Article provided) that may have been lost to it or may have been wholly or partly destroyed by accident or otherwise, with other railroad rolling stock of equal value, title to which shall be properly vested in the Trustee as though it had been part of the leased equipment originally delivered by the Trustee to the Railway Company. The rights and remedies of the Trustee to enforce and to recover any of the rental payments from the Railway Company shall not be affected by reason of the leased equipment or any thereof becoming wholly or partly destroyed, lost or unfit for use.

The Railway Company agrees to comply in all respects with all acts of Congress and with the laws of the United States, and of the states, territories and counties in which its lines may extend during the term of this agreement and with the lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the equipment, and in the event that the said laws or rules require the alteration of any of the said equipment, the Railway Company agrees to conform therewith at its expense and maintain the same in proper condition and design for operation under such laws and rules during the life of this agreement; *provided, however,* that the Railway Company may in good faith contest the application of any such law or rule in any reasonable manner which will not affect the title of the Trustee in and to the equipment.

5. Until all the obligations of the Railway Company under this lease shall have been fully performed, the title to all of the leased equipment, together with any and all replacements thereof made hereunder, shall be and remain in the Trustee; and except as lessee under this lease, the Railway Company shall not have any title to any of the leased equipment or any replacements thereof and (except as expressly provided in Article 15 of this lease) shall not make any agreements with relation to the whole or any part of such equipment or replacements which in any way shall diminish or alter any obligation of the Railway Company concerning the same.

The Railway Company covenants that it will keep every piece of the leased equipment and replacements thereof at all times plainly marked on each side thereof with the words and letters following, to wit: "South Coast Railway Equipment Trust, Series D; National Trust Company, Trustee, Owner, Lessor." Each locomotive and car included in the leased equipment shall at the time of the delivery thereof to the Railway Company be so plainly marked by a metal plate, securely fastened on each side thereof, or by other durable marking, and each item of equipment acquired by the Railway Company as in this lease provided in replacement of any of the leased equipment shall be similarly so marked at the time of its acquisition. In case any of such plates or marks shall at any time be removed, defaced or destroyed, the Railway Company covenants that it will immediately restore the same. The Railway Company covenants that it will not allow anything to be placed on any of such equipment which might be interpreted as a claim of ownership by the Railway Company or by any one other than the Trustee; *provided, however,* that the Railway Company may cause the said equipment to be lettered, "South Coast," "Coast System" or in some other appropriate manner for convenience of identification of the leasehold interest of the Railway Company therein. The Railway Company covenants that it will not change or permit to be changed the number of any of the locomotives or cars included in the leased equipment or replacements thereof, without the written consent thereto by the Trustee; and in any such case, if the same be feasible or necessary, will at its own expense cause to be made such notation on or addition to the record of this lease as may be proper to preserve or protect the record title of the Trustee to such equipment.

6. The Railway Company at its own cost shall maintain in good order and repair (the damages to be made good including damage by fire) all of the leased equipment and all replacements thereof made hereunder. Until the Railway Company shall have fulfilled all its obligations under this lease, it shall furnish to the Trustee through its President or a Vice-President, once in each year, an accurate statement in writing of *(a)* the equipment then in actual service, *(b)* the amount and description of all such that may have been lost or destroyed by accident or otherwise during the year next preceding and of the replacements thereof, and *(c)* the amount and description of all repaired during the year next preceding and of all then undergoing repair or withdrawn from use for repairs. Once in every such year the Trustee shall have the right, but shall be under no duty, to inspect the equipment by an agent or agents properly accredited, whose reasonable compensation shall be paid by the Railway Company. The Trustee may demand and the Railway Company agrees thereupon to furnish from time to time such additional evidence as shall be satisfactory to the Trustee

that the covenants of the Railway Company contained in this Article 6 have been duly performed.

7. The Railway Company shall indemnify the Trustee against all claims arising out of or connected with the ownership or use of any of the leased equipment or replacements thereof, and particularly against any or all claims arising out of the use of any patented inventions in or about the leased equipment or replacements; and the Railway Company shall not be relieved from any of its obligations under this lease by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

8. The Railway Company covenants that it will cause this lease to be filed, registered and recorded in each and every jurisdiction in which the lines of railroad of the Railway Company enter and in any other jurisdictions as may be required by law, in order to publish notice of and to protect the Trustee's title to the leased equipment and any replacements, and from time to time will perform any other act required by law, and will execute any and all further instruments that reasonably shall be requested by the Trustee for such publication and protection of such title. Until it shall have discharged all its obligations under this lease, the Railway Company shall pay all costs, charges and expenses, including all recording and registration taxes and fees, and all expenses incident to the preparation, execution, acknowledgment, filing, registering and recording of this lease and the said Agreement dated July 1, 1924, and of any instrument of further assurance, and all stamp taxes, duties, imposts, assessments, charges, fines and penalties of any kind imposed upon this lease, or the leased equipment, or the parties operating the same, or the Trustee, either because of its ownership of the leased equipment or the manner of operation thereof, and shall keep the leased equipment and all replacements thereof at all times free from any liens which would be an encumbrance upon the Trustee's title thereto.

9. In case the Railway Company *(a)* shall make default in any payment hereinabove agreed to be made by it to the Trustee and such default shall have continued for the period of ninety days or *(b)* shall fail to observe or perform any of the agreements herein on its part required to be performed and such default shall have continued for the period of ninety days—then and in any such case the Railway Company shall be deemed to have committed an "act of default."

10. If the Railway Company shall have committed any act of default, then and thereafter at any time during the continuance of such default, the Trustee at its option may declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rentals) payable by the Railway Company as set forth in Article 3 of this lease, and not theretofore paid; and thereupon the entire

amount of such rentals shall become and shall be due and payable immediately, without further demand, together with interest at the rate of five per cent per annum on any portion thereof then overdue; and for the total amount so becoming forthwith payable by the Railway Company the Trustee shall be entitled to recover judgment, with interest at the rate of five per cent per annum, and to collect such judgment out of any property of the Railway Company wherever situated. Any and all moneys collected by the Trustee as provided in this Article 10 shall be applied by it as hereinafter in Article 14 of this lease provided. In its discretion the Trustee may waive any such declaration upon the payment to it of all sums theretofore in default, and upon performance by the Railway Company of any other of its obligations under this lease which theretofore it shall have failed to perform, and thereupon the rentals remaining unpaid by the Railway Company shall become payable from time to time as provided in Article 3 of this lease.

11. If the Railway Company shall have committed any act of default, then at any time thereafter during the continuance of such default the Trustee may take possession of any and all of the leased equipment and replacements, and may remove the same from the possession and use of the Railway Company; and for such purpose may enter upon the premises of the Railway Company; but the Railway Company agrees to deliver said leased equipment and replacements at its own cost at such place or places on its railroad as the Trustee may reasonably designate and for such purpose to move or draw the said equipment in the usual manner and at the customary speed of freight trains, and further agrees to store the leased equipment and replacements upon its premises for the Trustee without charge until the Trustee shall remove the same therefrom.

12. If the Railway Company shall have committed any act of default, then at any time thereafter during the continuance of such default (and only after making the declaration provided for in Article 10 of this lease) the Trustee, with or without retaking possession thereof, may sell the leased equipment and replacements or any thereof, free from any and all claims of the Railway Company at law or in equity, in one lot and as an entirety or in separate lots. Any sale or sales hereunder may be held or conducted at such place or places and at such time or times as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the property to be sold, and in general in such manner as the Trustee may determine, but so that the Railway Company may and shall have a reasonable opportunity to bid at such sale. Upon any such sale, the Trustee itself may bid for and may become the purchaser of the property offered for sale or any part thereof, without accountability to the Railway Company in respect thereof except for payment of the purchase price and compliance with the terms of sale, and in settlement or payment of such pur-

chase price shall be entitled to have credited on account thereof the sums then due to the Trustee by the Railway Company under this lease.

13. Each and every power or remedy hereunder specifically given to the Trustee shall be in addition to every other power or remedy hereunder specifically given or now or hereafter existing at law or in equity or by suit, and each and every power and remedy hereunder specifically given or otherwise so existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee; and the exercise or the beginning of the exercise of one power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission of the Trustee or its assigns in the exercise of any right or power accruing upon any act of default as above defined shall impair any such right or power or shall be construed to be a waiver of such act of default or an acquiescence therein.

14. If the Railway Company shall commit an act of default and during the continuance of such default the Trustee shall exercise any of the powers conferred upon it by Articles 10, 11 and 12 of this lease, all payments made by the Railway Company to the Trustee under this lease after such act of default, and the proceeds of any judgment collected by the Trustee from the Railway Company hereunder, and the proceeds of every sale by the Trustee hereunder of any of the leased equipment and replacements, together with any other sums which may then be held by the Trustee under any of the provisions of this lease, shall be applied by the Trustee in the order of priority following, *viz.*: First, to the payment of all proper charges of the Trustee and of all expenses properly incurred or advances properly made by the Trustee in accordance with the provisions of this lease, including the expense of any retaking of the whole or any part of the leased equipment and all expenses of any sale thereof, and next, to the payment of all sums of money due and payable to the Trustee under the provisions of this lease.

After all such payments shall have been made in full, the title to any of the leased equipment remaining unsold shall be duly conveyed by the Trustee to the Railway Company to be held thereafter for its own use, free from any further liabilities or obligations to the Trustee. If, after applying all of such sums of money realized by the Trustee as aforesaid, there shall remain any amount due to the Trustee under the provisions of this lease, the Railway Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee, there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Railway Company.

15. It being desirable for the interests of both parties to this lease that any of the leased equipment which in any respect shall have become

unsuitable for the use of the Railway Company shall be promptly sold and replaced, it is mutually understood and agreed that at any time hereafter until title thereto shall become vested in the Railway Company, the Trustee shall sell any pieces of the leased equipment or replacements held by the Railway Company under this lease upon the written request of the Railway Company, evidenced by a copy of a resolution of its Board of Directors or its Executive Committee certified by its Secretary under its corporate seal; *provided, however,* that the proceeds of such sale or sales, and any money paid to the Trustee as hereinafter provided, shall be received by the Trustee and by it shall be applied to the purchase of railroad rolling stock as specified by the Railway Company, which in all respects shall be treated as hereinabove provided for replacements, and which shall become and shall be subject to this lease and to all the terms and conditions hereof. No such sale shall be made for less than the fair value of the parcel sold as in good repair at the time of sale, unless and until the Railway Company shall have paid to the Trustee the difference between the price at which it is to be sold and such fair value as in good repair. For this purpose, the fair value of the sold parcel as in good repair shall be considered to be the original cost thereof less five per cent (5%) of said original cost for each full year during which this lease has run prior to the date of sale.

16. This agreement is simultaneously executed in several counterparts, each of which shall be deemed to be an original and all collectively to be one and the same instrument.

17. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, National Trust Company, as Trustee under the aforesaid Agreement dated July 1, 1924, and South Coast Railway Company, have caused these presents to be signed in their behalf, respectively, and their respective corporate seals to be hereunto affixed as of the day and year first above written.

NATIONAL TRUST COMPANY

By H. F. Wall,
Vice-President.

Attest:

C. W. Tower,
Assistant Secretary.

[CORPORATE SEAL]

Signed, sealed and delivered as to
National Trust Company in the
presence of

C. C. Clinton,
E. K. Thomas.

SOUTH COAST RAILWAY COMPANY

By Wm. R. Rhodes,
President.

Attest:

C. D. Post,
Secretary.

[CORPORATE SEAL]

Signed, sealed and delivered as to
South Coast Railway Company
in the presence of
C. C. Clinton,
E. K. Thomas.

[ACKNOWLEDGMENTS]

INVENTORY OF EQUIPMENT REFERRED TO IN FOREGOING LEASE.

Mountain type locomotives, Nos. 401 to 420 inclusive, total 20 locomotives; to be built by Standard Locomotive Company.

Switching locomotives, Nos. 251 to 255, inclusive, total 5 locomotives; to be built by Standard Locomotive Company.

Passenger coaches, Nos. 121 to 123, inclusive, total 3 cars; to be built by The National Car Company.

Steel underframe ventilated box cars, Nos. 20,201 to 20,400, inclusive, total 200 cars; to be built by The National Car Company.

Caboose cars, Nos. 847, 849, 851, 883 to 899, inclusive, total 20 cars; to be built by The National Car Company.

Wood underframe ballast cars, Nos. 4101 to 4200, inclusive, total 100 cars; to be built by The National Car Company.

APPENDIX III

FORM OF DEPOSIT AGREEMENT

THE CENTRAL RAILWAY COMPANY

First Mortgage Five Per Cent 50 Year Gold Bonds

Due June 1, 1958

DEPOSIT AGREEMENT

Dated as of December 11, 1925

George E. Hill,
Chairman.
William C. Brown
Daniel J. Morgan,
R. G. Read,
Committee.

Henry Grey, Secretary,
130 Pine Street, New York City.

Root, Case & Gardiner,
32 Nassau Street, New York City
Counsel.

National Trust Company
200 Wall Street, New York City
Depositary

Agreement dated as of December 11, 1925, between George E. Hill, William C. Brown, Daniel J. Morgan and R. G. Read (hereinafter called the Committee), parties of the first part, and such holders of the First Mortgage Five Per Cent 50 Year Gold Bonds of The Central Railway Company as shall become parties hereto in the manner herein provided (hereinafter called the Depositors), parties of the second part,

Witnesseth:

Whereas, The Central Railway Company executed its certain mortgage (hereinafter called the Central First Mortgage) dated August 1, 1908, whereby it conveyed its railroad property and franchises therein described to Peoples Trust Company of New York, now National Trust Company of New York, as Trustee, to secure the payment of its First Mortgage Five Per Cent 50 Year Gold Bonds (hereinafter called the Bonds); and

Whereas, the properties of said The Central Railway Company were hereafter acquired by The New York and San Francisco Railroad Company (hereinafter called the Company); and

WHEREAS, a Receiver has been appointed for the Company and its property, including property covered by the Central First Mortgage, and default has occurred in the payment of the interest due on the Bonds on June 1st, 1925, and December 1st, 1925, and it is desirable that the holders of the Bonds should unite for the protection of their interests;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein recited, and other advantages which will accrue to the Depositors respectively from a union of interests and concerted action, the Depositors, each for himself and not for any of the others, do agree with each other and the Committee as follows:

FIRST. The above named parties of the first part, their associates and successors appointed as herein provided, are hereby constituted a Committee for the Depositors with the powers hereinafter specified.

SECOND. Holders of the Bonds may become parties to this agreement by depositing their Bonds under the terms hereof, within such period or periods and upon such terms as the Committee may from time to time, either generally or in specific instances, determine, with National Trust Company, which is hereby designated the depositary under this agreement and is hereinafter referred to as the Depositary, or with some agent or sub-depositary appointed for that purpose, as hereinafter provided. Bonds in coupon form should have attached all unpaid coupons whether matured or unmatured and registered Bonds must be accompanied by a properly executed transfer thereof in blank. With the consent of the Committee, holders of certificates of deposit issued in behalf of any other committee and representing any of the Bonds may likewise become parties to this agreement by depositing under the terms hereof their certificates of deposit in transferable form. After any such deposit no separate action shall be taken by a Depositor with respect to the Bonds, coupons or certificates of deposit so deposited. The bonds and certificates of deposit deposited hereunder or agreed to be so deposited are sometimes referred to herein as the deposited securities; and any reference in this agreement to deposited securities shall include the coupons and claims to interest on any Bonds deposited or agreed to be deposited hereunder. The deposited securities shall be held by the Depositary for the account of and subject to the order of the Committee. The Committee, or the Depositary at the request and subject to the approval of the Committee, may designate any bank, trust company, banking house, firm or individual to act as agent of the Depositary or as a sub-depositary, within or without the United States, to receive upon deposit and to receipt for Bonds and certificates of deposit deposited hereunder, to issue certificates of deposit therefor and to assist in the performance of any other duties imposed upon it either by this agreement or by the Committee.

For every such deposit appropriate certificates of deposit, issued by the Depositary (or by any sub-depositary, as the case may be), transferable as the Committee may determine and in such form as may be approved by the Committee, shall be delivered to the Depositors. The Committee may provide that certificates of deposit so issued may be entitled to registry in the name of the owner at the office of the Depositary, or other sub-depositary or agent for registration appointed by the Committee or by the Depositary upon the request of the Committee, and that the interests represented by such certificates of deposit shall then be transferable only upon the books of the Depositary or such other sub-depositary or agent for registration. Certificates of deposit may in the discretion and on the order of the Committee or in accordance with rules and regulations promulgated by the Committee be issued by the Depositary (or by an agent or sub-depositary, as the case may be) without registration and when any certificate of deposit is so issued, it may be treated by the Committee and the Depositary (or by any agent or sub-depositary, as the case may be) as an instrument transferable by delivery. Where a certificate of deposit is registered as to ownership, as above provided, the Committee may provide that the same may be discharged from registry by being transferred to bearer, after which it shall again become transferable by delivery, and may again and from time to time be registered in the name of the owner or transferred to bearer as before.

Upon the transfer of any certificate of deposit, whether upon the registry books in the case of registered certificates of deposit or by delivery in the case of non-registered certificates of deposit, the transferee shall have all the rights of the original Depositor and shall for all purposes be substituted for the prior holder, and shall be included under the term "Depositor." The term "holder of certificate of deposit" and substantially similar expressions shall mean the bearer for the time being of a non-registered certificate of deposit and the owner for the time being of a registered certificate of deposit, and the holders of the respective certificates of deposit may be treated as the absolute owners thereof and neither the Committee nor the Depositary shall be affected by any notice to the contrary.

The Committee may, in its discretion, from time to time cause the registry books of the certificates of deposit to be closed for such period or periods as it may deem expedient. The Committee may, under regulations to be adopted by it and approved by the Depositary, permit the issue of substitute certificates in case certificates are lost, stolen, mutilated or destroyed. The Committee may appoint such registrar or registrars of certificates of deposit as it may determine and may make application or cause application to be made for the listing of said certificates of deposit upon the New York Stock Exchange and elsewhere. The Committee may in its uncontrolled discretion allow holders of

Bonds or of certificates of deposit issued in behalf of other committees to become parties hereto without the actual deposit thereof, provided that such holders shall execute this agreement and shall give the Committee assurance satisfactory to it that such Bonds or certificates of deposit shall be deposited when, if and as the Committee shall request such deposit, and all persons so becoming parties hereto do thereby vest in the Committee title to the Bonds or certificates of deposit so held by them respectively and shall be included in the term Depositors as used herein. The Committee may also in its uncontrolled discretion refuse to receive the deposit of any particular Bonds or certificates of deposit.

THIRD. The Committee is hereby vested under the terms of this agreement with the legal and equitable title to all the Bonds and coupons and certificates of deposit deposited hereunder, with the same force and effect as if the Committee were the absolute owner thereof, and the Depositors hereby assign and transfer the same to the Committee, their respective successors and associates appointed as hereinafter provided, as joint tenants, and not as tenants in common.

FOURTH. Any moneys from time to time received by the Committee or the Depositary for principal and interest upon the deposited Bonds and coupons, or any proceeds of the same, may be paid over to the respective Depositors at the direction of and subject to regulations prescribed by the Committee.

FIFTH. On behalf of the Depositors, or any of them who desire it, the Committee in its uncontrolled discretion may procure loans, to the amount of any matured and unpaid interest, on the Bonds represented by the certificates of deposit of such Depositors, and advance the amount thereof to them, and for that purpose such Bonds with the coupons thereto appertaining on which loans are made may be pledged by the Committee on such terms as the Committee may in its uncontrolled discretion determine, but no Bonds may be pledged for such purpose except the Bonds on which such amounts of interest are advanced. In case such loans are made to any Depositor, an appropriate notation thereof shall be made by the Depositary upon his certificate of deposit.

Upon the termination of this agreement, or upon the preparation, or approval and adoption, of any plan, the Committee is empowered to employ any equitable method it may deem wise for discriminating between certificates of deposit as to which this privilege has been availed of and those as to which it has not; but in no event shall any Depositor upon whose certificate of deposit such a loan has been made withdraw the Bonds represented by such certificate of deposit except upon fulfilling the requirements provided in Article Eleventh hereof and in addition thereto upon repayment to the Committee of such loan, with interest, to the date of withdrawal, at such rate as the Committee may determine. If any sum be realized by the collection of coupons or

interest installments, the amount of which has been advanced to any Depositors, the Committee may apply such sum to the repayment of said loans and interest so far as the same may be necessary.

SIXTH. The Depositors, in addition to vesting in the Committee the complete and absolute title to the Bonds, coupons and certificates of deposit deposited hereunder, hereby jointly and severally further constitute and appoint the Committee, as at any time constituted in accordance herewith, their only and exclusive agents and attorneys in fact for the purpose of carrying out this agreement, and hereby authorize and empower the Committee to exercise all the rights and powers of owners of such Bonds and coupons under any of the provisions thereof or of the Central First Mortgage, or otherwise, as well as to take or cause to be taken or defend or participate in, such suits, actions or proceedings, at law or in equity, or before the Interstate Commerce Commission or any other commission or similar body or any governmental department, to enter into such transactions, execute such papers, and do or cause to be done such acts, whether under the Central First Mortgage, or otherwise, as the Committee may consider wise or proper in order to preserve or enforce the rights of the Depositors, or any of them; and also to rescind any action taken whenever the Committee may consider such rescission wise or proper for the same purposes.

The Committee is hereby further authorized, in respect of any certificates of deposit issued in behalf of other committees which may be deposited hereunder, to exercise all the rights and powers of owners of such certificates of deposit under the agreements under which the deposited certificates of deposit were issued, to dissent from any plan or plans announced pursuant to the provisions of the agreements under which such certificates of deposit were issued, to withdraw from such agreements and to surrender any and all certificates of deposit deposited hereunder to the respective depositaries issuing the same and to receive in exchange therefor the Bonds, coupons and other property, if any, represented by such certificates of deposit. The Committee may pay any and all amounts necessary to accomplish any such withdrawals. Such amounts shall be deemed advances by the Committee and shall be charged to the Depositor who deposited such certificate of deposit or to the general expenses of the Committee, as the Committee may determine. Payment of amounts so charged, in the uncontrolled discretion of the Committee, may be made a condition precedent to the right of Depositors to withdraw from this agreement under the provisions hereof and to their right to receive Bonds, certificates of deposit, securities or other property under the terms of this agreement.

All powers granted by this agreement may be exercised before or after the preparation, or approval and adoption, of any plan of reorganization or readjustment and before or after the sale or contract for the sale of the franchises, property or assets of the Company or any

part thereof. The powers herein granted shall also be deemed to include the power to consent from time to time to the issue of receivers' certificates or other evidences of indebtedness, or obligations by receivers in the possession of all or any part of the property covered by the Central First Mortgage, although such receivers may be acting in proceedings other than proceedings to foreclose the Central First Mortgage, and to purchase the same. The Committee may compromise, adjust, release and surrender any and all rights, claims, demands and security in respect of and for the Bonds and certificates of deposit deposited hereunder; and may sell or exchange said Bonds and certificates of deposit for any consideration which it shall approve either for cash or for bonds or stock of any other company or for other property. The Committee may, upon such terms as it shall deem expedient, procure the release or discharge of any lien upon the property of or any claim against the Company or of any affiliated, controlled or subsidiary company, or of any receiver or receivers, but the Committee shall not be bound to procure any such release or discharge.

The Committee is specifically authorized to bid for and to purchase at any sale which may be held pursuant to any decree of foreclosure or sale under the Central First Mortgage or any other mortgage covering property of the Company, or at any other sale of any of the properties of the Company which may be held under the terms of said mortgages or to enforce liens on said properties, on such terms and at such prices as the Committee, in its uncontrolled discretion, may deem advisable, all or any part of the property which may be offered for sale. The Committee may use the deposited Bonds and coupons in payment or in part payment of the purchase price therefor.

The Committee may from time to time, as it may deem wise, in any manner, purchase, acquire, contract in regard to, deal in, sell, assign or dispose of any property, lease, chose in action or securities in which the Company has any interest, and also any franchises, property, securities or obligations of the Company or of any related or affiliated corporation, and in general any property, obligations or securities which the Committee may deem related to the interests of the Depositors, or any of them. To make payments therefor, or in regard thereto, and in general to carry out its powers under any of the provisions hereof, the Committee may use any funds or property at any time subject to its control and it may charge or pledge the deposited Bonds and coupons, or any part of them, to obtain funds to pay its expenses, to effect purchases or acquisitions, as above stated, or to discharge liens on property purchased by it, or in which it has an interest, and as otherwise stated herein. With regard to any property or securities acquired by it the Committee may exercise all rights of ownership, including voting rights.

Any plan or agreement of reorganization or readjustment prepared, or approved and adopted, by the Committee as herein provided may

make provisions for any or all of the bonds, obligations, shares of stock, indebtedness or other property of or claims against the Company, or any predecessor, affiliated, related, allied, controlled, controlling or subsidiary corporation of the Company, or any corporation, partnership or individual which the Committee may deem related to the interest of the Depositors.

The deposited securities and all property purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, if the Committee shall so determine, shall be charged with the payment of the compensation of the Committee and its expenses, including as a part of the Committee's expenses, wherever its expenses are referred to in this agreement, the compensation and expenses of the Depositary and of any agent or subdepositary, and counsel fees, and also the payment of the indebtedness, obligations and liabilities of the Committee.

SEVENTH. The Committee shall have power to prepare and adopt a plan and agreement for the reorganization of the Company or of any affiliated corporation, or of its affairs and properties, or for the readjustment of its debt, which plan in the uncontrolled discretion of the Committee may include or deal with other properties, such plan to be in such form and to contain such terms and provisions as the Committee in its uncontrolled discretion may determine, or it may approve and adopt any such plan or agreement, although not prepared by it.

Any such plan or agreement may constitute managers of the reorganization or readjustment and provide for their compensation and expenses and all expenses of carrying it out, and may provide for syndicates or underwritings in respect of the securities to be issued under such plan or agreement, and members of the Committee may act as such managers or may be members of any committee or committees thereby constituted or therein referred to and may be members of any such syndicate or participate in any such underwritings. Any such plan or agreement may make provisions for the payment of the compensation, disbursements and expenses of the Committee and may charge with the payment thereof, or of any part thereof as well as of all or any part of the indebtedness, obligations and liabilities incurred by the Committee, the securities and property subject to such plan and agreement. Any such plan or agreement may contain any terms and provisions and confer upon the Committee or upon any other committee under such plan or agreement or, if such plan or agreement shall constitute managers under such reorganization or readjustment, upon the managers, any powers or authority which the Committee in its uncontrolled discretion may deem proper and expedient and may impose such conditions upon participation thereunder as the Committee may deem wise.

When the Committee shall have prepared, or approved and adopted, any such plan and agreement, a copy thereof shall be filed with the Depositary, and thereupon a brief notice of the fact of such preparation, or approval and adoption, and filing shall be given as provided in Article Fourteenth hereof, and such notice shall be conclusive notice as of the date of its first publication to all Depositors, whether or not they receive actual notice, of the preparation, or approval and adoption, of such plan and agreement by the Committee and of the filing of a copy thereof with the Depositary.

Any Depositor may within thirty days from the date of the first publication of said notice file with the Depositary notice in writing of dissent from such plan and agreement. If within said period of thirty days Depositors holding certificates of deposit representing fifty per cent of the principal amount of the deposited securities shall so file notice of dissent from such plan and agreement, such plan and agreement shall not become effective, and the Committee may thereafter from time to time prepare, approve or adopt modifications thereof or supplements thereto or other plans and agreements, and give like notice as aforesaid. If within said period of thirty days Depositors holding certificates of deposit representing fifty per cent of the principal amount of the deposited securities shall not so file notice of dissent, then such plan and agreement shall in the uncontrolled discretion of the Committee become effective and be binding on all Depositors who do not withdraw from this agreement as hereinafter provided, all of whom shall be conclusively and finally deemed for all purposes to have assented to said plan and agreement and the terms thereof and to be irrevocably bound and concluded thereby, whether or not they shall have expressly assented thereto or shall have received actual notice. In case any plan or agreement shall become effective as above provided, the Committee shall publish notice to that effect as provided in Article Fourteenth hereof and any Depositor who shall have filed notice of dissent from such plan and agreement as aforesaid may within twenty days after the first publication of such notice, upon the terms and conditions set forth in Article Eleventh hereof, withdraw from this agreement and thereupon shall be entitled to receive securities or other property as provided in said Article Eleventh hereof and shall cease to have any rights hereunder.

The Committee shall be fully authorized to carry out any plan and agreement which may become effective as above provided, or to assent to and coöperate with the carrying out of such plan by the managers thereof, and shall have full power and authority to use, transfer or deliver under or in accordance with such plan and agreement, the deposited securities and all or any part of the property purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, as fully as though

such plan and agreement were a part hereof and had been expressly assented to by the Depositors.

No Depositor shall have the right to withdraw from this agreement except in the event and upon the terms herein expressly permitted; but the Committee may, in its uncontrolled discretion, permit one or more Depositors to withdraw in other events and upon other terms.

The Committee is empowered at any time after adoption or filing of such plan to abandon the same whenever in its uncontrolled discretion it shall deem that course to be wise. The Committee may also at any time after preparation, or approval and adoption, or filing of any such plan amend the same as in its uncontrolled discretion it may see fit. Any such amendment shall be filed with the Depositary, but if in the judgment of the Committee, which shall be conclusive and binding, any such amendment shall materially alter the rights of Depositors, notice of such filing of amendment shall be given as provided in Article Fourteenth hereof, and in such event the Depositor shall have the same rights of dissent and withdrawal as in the case of the original filing of a plan with the Depositary and upon the same conditions. Successive amendments or abandonments aforesaid shall not affect the powers of the Committee thereafter to prepare or approve and adopt, or amend or abandon new plans.

EIGHTH. No enumeration of special powers given to the Committee by any provisions of this agreement shall be construed to limit or restrict the general powers hereby conferred, or intended to be conferred upon it, and it is hereby expressly agreed that it is the intention of this instrument to confer upon the Committee in respect of Bonds or certificates of deposit at any time deposited hereunder, and in all other respects, all powers which the Committee may deem necessary or expedient in and towards the furtherance of the general purposes of this agreement in any respect, even though such power be of a character not now contemplated.

NINTH. The Committee as at any time constituted, and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as originally formed. The Committee may elect a Chairman and may appoint a Secretary, who need not be a member of the Committee and who shall keep a record of its acts and proceedings. It may from time to time choose such other officers and designate or cause to be designated, such committees or sub-committees as it may see fit, and may confer upon any of its officers, committees or sub-committees such powers as it may deem proper. The Committee may from time to time add to its number by electing by votes of the majority of its members, as from time to time constituted, an additional member or additional members, and the member or members so elected shall have all the powers of a member of the Committee under this agreement and together with those herein named, or their successors, shall con-

stitute the Committee under this agreement with like force and effect as though they were specifically named herein. Any member of the Committee may resign by filing written notice of his resignation with the Chairman or Secretary of the Committee, and the Committee may settle any account or transaction with such member and give a full release and discharge to him upon such resignation. In case at any time a vacancy shall occur in the Committee by death or resignation, or from any other cause, such vacancy may, but need not, be filled by the vote or written consent of a majority of the members of the Committee as existing for the time being. Notices of changes in the membership of the Committee filed with the Depositary shall bind all parties hereto.

TENTH. A majority of the members of the Committee shall constitute a quorum for all purposes, and all the powers of the Committee may be exercised by a majority of its members either at a meeting or in writing or by telegraph or cable without a meeting. A member of the Committee may, by written proxy, authorize any person (who may, but need not, be another member of the Committee) to act in his place for any and all purposes. Any action taken by an officer or subcommittee, duly authorized thereto, shall be the action of the Committee, and the certificate of the Chairman or Secretary as to any action by the Committee shall be conclusive upon and full protection to the Depositary and conclusive upon all Depositors as to all acts and things so certified to have been done by the Committee. The Committee may from time to time make, alter or rescind such rules and regulations for the transaction of its business as to it may seem advisable.

The Committee may employ such depositaries, counsel, attorneys, accountants, engineers, experts and other agents and employees as it may deem expedient and may fix and pay the compensation for their services and may make such other expenditures as it shall deem necessary or appropriate for any of the purposes of this agreement, and the Committee shall be entitled to a reasonable compensation for its own services, provided that in no event shall the Committee be authorized to exact or collect from the Depositors or the deposited securities any sums for expenses and compensation of the Committee exceeding two per cent (2%) of the face amount of the certificates of deposit issued hereunder, which sum, however, may be increased upon the consent in writing of the holders of fifty per cent or more of the face amount of such certificates of deposit.

The Committee undertakes in good faith to endeavor to protect the interests of the Depositors, but the members of the Committee assume no further responsibility.

Neither the Committee nor the Depositary assumes any responsibility or liability as to the genuineness, validity or regularity of any of the deposited Bonds, coupons, or certificates of deposit. Neither the De-

positary nor the Committee nor any member of the Committee nor the Secretary shall be liable for any action taken in good faith in the belief that any of the deposited Bonds or coupons or certificates of deposit, or other documents or signatures are genuine. Neither the Committee nor any of its members, nor the Depositary, shall be personally liable for the acts of each other nor for any act or omission of any agent, attorney or employee selected in good faith, nor for any error of judgment or mistake of law, nor for anything other than wilful malfeasance of the party sought to be held liable. No statement, explanation, or suggestion contained in this agreement, or in any plan prepared, or approved and adopted hereunder, or in any communication or notice issued by advertisement or otherwise, or which may hereafter be issued by the Depositary or by the Committee, is intended or is to be accepted as a representation or warranty or as a condition of deposit, subscription or assent under this agreement or any agreement supplemental hereto. No defect or error shall release any deposit under this agreement or affect or release any assent or subscription hereto made except by the written consent of the Committee.

The Depositary shall incur no liability for anything done or permitted to be done at the request and direction of the Committee, or of any officer or sub-committee of the Committee, the deposited Bonds, coupons and certificates of deposit being intended and agreed to be held at the order and under the control of the Committee. The Depositary shall be bound only to exercise reasonable care in the safekeeping of the deposited Bonds, certificates of deposit, and other securities and property which may be deposited with or held by it hereunder and to deal therewith in accordance with the directions of the Committee. The direction of the Committee, or a majority thereof, shall be a complete justification for any action or omission to act on the part of the Depositary. The Depositary, upon the request of the Committee, shall keep necessary books for registration of the certificates of deposit issued hereunder. The Depositary may resign upon ten (10) days' notice in writing to the Committee, and the Committee shall have power to remove the Depositary and from time to time fill any vacancy however arising in the office of the Depositary. In the event of any such resignation or removal the Depositary shall, upon receiving due and proper receipt and acquittance, deliver all cash, securities, property and records held by it to the new depositary.

Any member of the Committee and any firm or corporation of which he may be a member or officer and the Depositary, or any of them, or their respective officers and agents, may make deposits under this agreement and shall be entitled, to the same extent as any other Depositor, to all the rights and benefits accruing hereunder. They or any of them may be or become pecuniarily interested in any property or matters which are or may become subject to this agreement or to

any plan and agreement of reorganization and readjustment which the Committee may prepare or approve and adopt as herein provided, and may contract with, or deal with the Committee in the same manner as if they were not such members and as if they were in no way connected with the Committee, or be members or managers of any committee or of any syndicate which may contract with the Committee or be formed in contemplation of, or in connection with any plan or agreement of reorganization or readjustment prepared or approved and adopted under the authority of this agreement, and may likewise be interested in any securities of any other corporation which the Committee may acquire or deal in and may become interested in any corporation or property affiliated with the Company or related to the interests of the Company or of the Depositors. They may become officers, directors, voting or other trustees, or stockholders of the Company or of any corporation or corporations which may hereafter be formed in pursuance of this agreement or any plan prepared or approved and adopted hereunder.

The members of the Committee, or any of them, may become members of any other committee for the protection of any other obligations or securities of the Company or any predecessor, affiliated or related company, and the Committee may act in coöperation with any other committee so formed.

ELEVENTH. Whenever by any provision of this agreement a right of withdrawal is conferred upon any Depositor, such Depositor, if he desire to exercise such right, shall, at the time of and as a condition precedent to such exercise, surrender to the Depositary his certificate of deposit in transferable form and pay to the Depositary for account of the Committee: *(a)* the amount of interest which may have been advanced in respect of any installment or installments of interest upon the Bonds represented by such certificate of deposit; *(b)* such sums as the Committee in its uncontrolled discretion shall fix as his fair proportion of the compensation and expenses of the Committee incurred to the date of such surrender, but not exceeding two per cent of the face amount of the certificates of deposit so surrendered (unless the amount which the Committee is entitled to collect for its expenses and compensation shall have been increased as provided in Article Tenth); and *(c)* at the election of the Committee, such sum as the Committee in its uncontrolled discretion shall fix as his ratable proportion of all other indebtedness, obligations and liabilities of the Committee incurred to the date of surrender; and thereupon such Depositor shall be entitled to the delivery of Bonds or of certificates of deposit issued in behalf of other Committees to the amount called for by his certificate of deposit, or his ratable share as determined by the Committee of the proceeds of or securities exchanged or substituted for such Bonds and certificates of deposit; and if the Committee shall have required payment of any

sum pursuant to subdivision *(c)* of this article, his ratable share of any other securities or property acquired by or in behalf of the Committee and not previously or simultaneously sold, contracted to be sold or otherwise disposed of by the Committee, or, as the Committee in its uncontrolled discretion may determine, a certificate in such form and with such provisions as the Committee shall prescribe evidencing his ratable interest in such securities, stock or property and in the ultimate proceeds of any liquidation or other dealing therewith by the Committee. Depositors by such withdrawal shall thereupon and without any further act be released from this agreement and cease to have any rights thereunder or under any plan and agreement prepared or approved and adopted pursuant to this agreement; provided, however, that such withdrawal shall not in any wise affect any rights or powers of the Committee hereunder or reserved in any such certificate of interest to deal with any securities or property theretofore or thereafter acquired by or on behalf of the Committee, notwithstanding the issuance to such withdrawing Depositors of certificates of interest with respect to such securities or property.

TWELFTH. The Committee is hereby authorized and empowered to construe this agreement, and its construction of the same, made in good faith, shall be final, conclusive and binding. It may supply any defect or omission or reconcile any inconsistency in this agreement and may amend the same in such manner and to such extent as it shall deem necessary or expedient in order properly and effectively to carry out the general purposes of this agreement. It shall be the sole judge of such necessity or expediency. All amendments shall be filed with the Depositary, and if in the judgment of the Committee, which shall be conclusive and binding, any such amendment does not materially alter the rights of Depositors, it shall, when so filed, become binding upon all Depositors without publication or notice. If in the judgment of the Committee any such amendment shall materially alter the rights of the Depositors, notice of filing thereof shall be given as provided in Article Fourteenth hereof. Any Depositor may at any time within fifteen days from the date of the first publication of said notice, upon the terms and conditions set forth in Article Eleventh hereof, withdraw from this agreement and thereupon shall be entitled to receive securities or property as provided in said Article Eleventh and shall cease to have any rights hereunder. All Depositors who do not so withdraw within said period of fifteen days shall be conclusively and finally deemed for all purposes to have assented to any such amendment and shall be irrevocably bound thereby, whether they have actual notice thereof or not.

THIRTEENTH. The Committee, if for any reason it shall consider it expedient, may at any time terminate this agreement by giving notice of its election so to do in the manner provided in Article Fourteenth hereof. In such case Depositors, upon payment to the Committee of the amounts

provided in Article Eleventh hereof, shall upon surrender to the Depositary of their certificates of deposit, in transferable form, be entitled to receive securities or other property as provided in Article Eleventh hereof in respect of withdrawals under this agreement, subject, however, in each case, to any existing pledge thereof theretofore made under the provisions of this agreement and to any use which the Committee may have theretofore made thereof in the course of any reorganization or readjustment, or in the carrying out of any of the provisions of this agreement, and subject to such reasonable rules and regulations as the Committee may prescribe.

Depositors, by the receipt of the last or final installment of their share of securities, cash or property, distributed by the Committee under any plan, or otherwise, or by the surrender of their certificates of deposit, thereby release and discharge the Committee and the Depositary from all liability and accountability of every kind, character and description whatsoever.

Within sixty days after the termination of this agreement the Committee shall file with the Depositary a statement of its accounts, setting forth with all reasonable detail its receipts and disbursements, including among other things all amounts paid for engineering, accounting and expert or other services and for the compensation of the members of the Committee. The Committee shall thereupon give notice of the filing of such statement in the manner provided in Article Fourteenth hereof. A copy of the said statement shall be given to each member of the Committee and the copy thereof deposited with the Depositary shall be subject at all reasonable times to examination, but only by the members of the Committee and its representatives and by Depositors personally or by attorney in fact duly authorized thereunto in writing. Unless legal proceedings impeaching the correctness of such accounts shall be duly commenced within sixty days after the first publication of such notice, said accounts and transactions as against all parties interested therein shall be conclusively presumed to be in all respects correct, and the Committee and the Depositary shall be released and discharged from all liability and accountability of every kind and description arising out of this agreement or any action taken by the Committee, excepting only such liabilities to holders of outstanding certificates of deposit, or otherwise, as are expressly admitted in said statement.

FOURTEENTH. Notice of the adoption of any plan of reorganization, and notice of any amendment thereof which in the judgment of the Committee shall materially alter the rights of Depositors, and notice of any amendment of this agreement which in the judgment of the Committee shall materially alter the rights of Depositors, shall be given by publication of such notice twice a week for two successive weeks in one daily newspaper of general circulation in the Borough of Manhattan, City of New York. All other notices to Depositors required hereby or provided

for herein or which the Committee shall deem proper to give, shall be given by publication of such notices once a week for two successive weeks in one daily newspaper of general circulation in the Borough of Manhattan, City of New York. Any notice given in the manner provided in this Article Fourteenth shall be conclusive notice of the facts therein stated as of the date of its first publication with like effect as if it had been on said date personally delivered to each of the Depositors, whether or not such Depositors or any of them shall have had actual notice. In its discretion the Committee may also cause any such notice to be published in other newspapers and on such dates as it may determine.

FIFTEENTH. The period of five years is specified as the period within which the Depositors shall be entitled, subject, however, to the provisions of Article Eleventh hereof, to the return of the Bonds, coupons, and certificates of deposit which they have deposited hereunder, or the receipt of new securities on reorganization or readjustment.

SIXTEENTH. This agreement shall be construed solely as an agreement among the parties hereto and as solely affecting and relating to the Committee and the Depositors and the Depositary, and no other person, firm or corporation shall have any right hereunder. This agreement shall bind and benefit the several parties hereto and each and all the survivors, heirs, executors, administrators, successors and assigns of said parties and of each of them.

SEVENTEENTH. This agreement may be executed in counterparts and all such counterparts shall be taken together as forming one agreement. Upon the execution of the agreement singly or in counterparts, by the Committee, or a majority of them, it shall be deposited with National Trust Company, the Depositary. By receiving a certificate of deposit issued by the Depositary the recipient or holder thereof shall thereby become and be a party to this agreement and be bound by its provisions, with the same force and effect as though an actual subscriber hereto.

IN WITNESS WHEREOF the members of the Committee have subscribed this agreement and the Depositors have become parties by depositing their securities and accepting certificates of deposit hereunder as above set forth or by signing these presents, all as of the date first above recited.

GEORGE E. HILL
WILLIAM C. BROWN
DANIEL J. MORGAN
R. G. READ

APPENDIX IV

LISTING REQUIREMENTS OF NEW YORK STOCK EXCHANGE

COMMITTEE ON STOCK LIST, NEW YORK STOCK EXCHANGE

[Reprinted through courtesy of New York Stock Exchange. Page references made to conform to this appendix.]

The Committee will meet Mondays at 3:15 P.M.

An application, *conforming to these requirements,* signed by an executive officer of the applying corporation, voting trustees, or depositary committees, and nine printed or typewritten copies must be filed with the Secretary of the Exchange at least five days prior to date set for consideration.

Applications must be accompanied by the required papers and agreements, and by a check for one hundred dollars for each $1,000,000 or portion thereof, of each class of security (including stock of the par value of $100 per share) or where stock of a par value of less than $100 per share check for one hundred dollars for each 10,000 shares or portion thereof or where stock without nominal or par value check for one hundred dollars for each 10,000 shares or portion thereof; checks to be drawn to the order of "Treasurer, New York Stock Exchange." In addition, companies making application are required to pay cost of printing. Printers' bills will be submitted directly to the applicant.

An application for listing Governmental, State, County or Municipal securities must be signed by a properly accredited official or by financial representatives, and be accompanied by required check as above and required papers.

Specimen applications furnished on request.

The employees of the committee on stock list are instructed to assist in the preparation of applications to list whenever so requested. No charge will be made for such service.

Requirements for Original Listing

Stock.

(For form of certificate eligible to be listed under this classification, and for list of papers to be furnished, see page 446 et seq.)

Every application for an original listing of capital stock shall recite:

A. Where incorporated.

B. (1) Amount applied for (whether temporary or permanent certificates); (2) authorized issue.

C. (1) Date of charter; (2) duration.

D. (1) Business; (2) special rights or privileges under charter or by-laws.

E. (1) Whether capital stock is full paid; (2) non-assessable; and (3) whether liability attaches to shareholders.

F. (1) Issues (by classes), dividend rate and par value; (2) total amount of each, authorized and issued; (3) increases and authority therefor, including *(a)* action by stockholders, *(b)* by directors and *(c)* by public authorities, etc.; (4) amount unissued, *(a)* options or contracts on same, *(b)* specific reservation for conversion.

G. If preferred stock; (1) whether cumulative or non-cumulative; (2) preferences, including *(a)* voting power; *(b)* dividends; *(c)* distribution of assets on dissolution or merger; *(d)* redemption; *(e)* convertibility; *(f)* special provisions.

H. Voting power of obligations of debt.

I. (1) Purpose of issue; (2) application of proceeds; (3) amount issued for securities, contracts, property; description and disposition; (4) additional property to be acquired, with particulars, as required by paragraph *N*.

J. (1) History of corporation; (2) of predecessor companies or firms, with location and stock issues (by classes); (3) conditions leading to new organization.

K. Tabulated list of constituent, subsidiary, owned or controlled companies showing *(a)* date of organization; *(b)* where incorporated; *(c)* duration of charter; *(d)* business; and *(e)* capital stock issues (by classes), par value, amount authorized, issued, owned by parent company.

L. (1) Mortgage, and (2) other indebtedness showing, *(a)* date, *(b)* maturity, *(c)* interest rate, *(d)* convertibility, *(e)* redemption by sinking fund or otherwise, *(f)* amount authorized, and *(g)* amount issued; (3) similar information regarding mortgage and other indebtedness of constituent, subsidiary, owned, or controlled companies.

M. Other liabilities, joint and several, (1) guaranties, (2) leases, (3) traffic agreements, (4) trackage agreements, (5) rentals, (6) car trusts, etc., (7) terms of each, and provision for payment; (8) similar description of other agreements or easements; (9) similar information as to constituent, subsidiary, owned or controlled companies.

N. (1) Description, location, nature and acreage of property, *(a)* owned in fee; *(b)* controlled; *(c)* leased; (2) railroads, mileage completed, operated and contemplated; (3) equipment; (4) character of buildings and construction; (5) tabulated list of franchises showing *(a)* where granted, *(b)* date, *(c)* duration, *(d)* purpose; (6) timber, fuel or mining lands, water rights; (7) similar information as to constituent, subsidiary, owned or controlled companies.

O. Policy as to depreciation.

P. (1) Character and amount of annual output for preceding five years; (2) estimated output (character and amount) for current year; (3) number of employees.

Q. (1) Dividends paid or declared; (2) by predecessor, and constituent, subsidiary, owned or controlled companies.

R. Financial statements; (1) earnings for preceding five years, if available, with interest charges, depreciation and federal taxes; (2) income and surplus account of recent date for at least two years, if available; (3) balance sheets of same dates; (4) balance sheet giving effect to recent financing, if any; (5) similar accountings for predecessor, constituent, subsidiary, owned or controlled companies; (6) corporations consolidated within one year previous to date of application, income and surplus account and balance sheet of all companies merged and balance sheet of applying corporation; (7) if in hands of receiver within one year previous to date of application, *(a)* income account and balance sheet of receiver at time of discharge, and *(b)* balance sheet at close of receivership.

S. Agreements contained on pages 449 and 450.

T. Fiscal year.

U. Place and date of annual meeting.

V. Location of principal and other offices.

W. Names of (1) directors, classified, with addresses; (2) officers; (3) transfer agents, with addresses; (4) registrars, with addresses.

In addition to the above, applications from corporations which own or operate mines must recite:

A. Patented and unpatented claims, by numbers.

B. (1) Geological description of country; (2) location and description of mineral and other lands; (3) ore bodies; (4) average value of ore; (5) character and analysis; and (6) methods of treatment.

C. History of workings, (1) results obtained; (2) production each year.

D. (1) Ore reserves compared with previous year showing separately as to character and metal content; (2) estimate of engineer as to probable life of mines; (3) probabilities by further exploration.

E. (1) Provisions for smelting and concentration; (2) proximity of property to railway or other common carrier.

F. Properties in process of development; income account if available; guarantees for working capital and for completion of development in event income account not available.

G. Total expenditures for preceding five years for acquisition of new property, development, proportion charged to operations each year.

H. (1) Policy as to depletion; (2) acquisition of new property; (3) new construction and development.

I. Production by tons, number of tons of ore treated, average assay yield, percentage of extraction, recovery per ton of ore, for preceding five years, if available.

In addition to the above, applications from corporations which own or operate oil and gas wells must recite:

A. (1) Brief history of oil field; (2) geological description of country; (3) character and gravity of oil.

B. (1) Total area of oil land (developed and undeveloped), *(a)* owned, *(b)* leased, *(c)* controlled, *(d)* proven, *(e)* under exploitation, *(f)* royalties.

C. (1) Number of wells (oil or gas) on each property, *(a)* in operation, *(b)* drilling, *(c)* contemplated, (2) average depth of wells drilled, *(a)* shallowest, *(b)* deepest, *(c)* probable life; (3) whether oil sands are dipping.

D. (1) Gross daily production—initial and present; (2) annual gross production from each property for preceding five years, if available; (3) estimated gross production for current year.

E. (1) Storage, capacity and location; (2) *(a)* amount of oil stored, *(b)* character, *(c)* value, (3) pipe line, *(a)* gauge, *(b)* capacity, *(c)* mileage.

F. (1) Refineries, *(a)* capacity, *(b)* acreage, *(c)* employees, *(d)* products and by-products.

G. Properties in process of development; income account, if available; guaranties for working capital and for completion of development in event income account not available.

H. Total expenditures for preceding five years for acquisition of new property, well drilling and development, proportion charged to operations each year.

I. (1) Policy as to depletion; (2) acquisition; and (3) developments of new properties.

(Note: For requirements as to voting trust or stock trust certificates, or certificates of deposit, see page 446.)

Bonds.

(For form of securities eligible to be listed under this classification, and for list of papers to be furnished, see pages 446 et seq.).

An application for an original listing of bonds shall recite all information required for listing stock, *and*

A. (1) Full title; (2) amount applied for (whether temporary or permanent), denominations and numbers; (3) amount authorized and outstanding, authority therefor, including *(a)* action by stockholders, *(b)* directors, and *(c)* public authorities, etc.; (4) whether bonds are coupon (registerable as to principal) or registered, interchangeable or exchangeable; (5) exchangeability or convertibility into other securities, and terms.

B. Names and addresses of trustees.

C. (1) Date of issue and maturity; (2) interest rate; (3) places at, and dates for payment of interest and principal; (4) where registerable or transferable; (5) kind and standard of money, and options; (6) tax exemption; (7) whether redeemable or purchasable in whole or part by sinking fund or otherwise, showing *(a)* dates, *(b)* price, *(c)* duration and place of published notice; (8) specified reservation of stock for conversion.

D. Provisions for declaration of principal due and payable in event of default of payment of interest, or other defaults, and waiver; percentage of outstanding bonds controlling trustee.

E. Purpose of issue and application of proceeds, similar to that called for by Paragraph I of the Requirements for Listing Stock; provisions as to additional issue.

F. Disposition of bonds refunded, redeemed or purchased for sinking fund, and mortgage securing same.

G. Mortgage or indenture provisions for (1) serial issues; (2) values in United States gold coin; (3) issuance in foreign languages and (4) that the English version governs; (5) terms of exchangeability of bonds payable in foreign places for bonds payable in United States or vice versa.

H. (1) Security—Mortgage, indenture of trust, or other agreement; and (2) liens; *(a)* properties covered, *(b)* mileage of railway lines, *(c)* buildings, *(d)* equipment, *(e)* securities, *(f)* rights, *(g)* privileges, *(h)* titles, *(i)* franchises, *(j)* leases, etc.; (3) other liens covering same or any part of same properties, (4) guaranty and terms.

I. Any unusual provisions or covenants contained in mortgage, or deed of trust.

Requirement for Listing of Additional Amounts

(For list of papers to be furnished, see pages 447 to 449.)

Refer to previous applications and last application by number and date, and recite:

A. Where incorporated.

B. (1) Amount applied for; (2) amounts authorized and outstanding; (3) authority for issue, including *(a)* action by stockholders, *(b)* by directors, and *(c)* by public authorities, etc., (4) total amount applied for.

C. (1) Purposes of issue; (2) application of proceeds; (3) amount, description and disposition of securities exchanged for new issues; (4) additional property acquired or to be acquired, with particulars as required by paragraph N of the Requirements for Listing Stock.

D. (1) Dividends paid and declared; also by constituent, subsidiary, owned or controlled companies; since previous application.

E. Changes, if any, in (1) charter, (2) by-laws, or (3) capitalization since previous application.

F. Changes in property, if any, since previous application.

G. (1) Character and amount of output since previous application or earnings as in application for original listing; (2) estimated output (character and amount) for current year; (3) number of employees.

H. Income account, surplus account and balance sheet of recent date, also for constituent, subsidiary, owned or controlled companies, or a consolidated income account, consolidated surplus account and a consolidated balance sheet.

I. Policy as to depreciation and depletion.

J. Fiscal year, place and date of annual meeting, location of offices, and names of officials as covered by Paragraphs T, U, V and W on page 2.

(Note: "When a corporation purposes to increase its authorized capital stock, thirty days' notice of such proposed increase must be officially given to the Exchange before such increase may be admitted to dealings."

(Note: "When the capital stock of a corporation is increased through conversion of convertible bonds already listed, the issuing corporation shall give immediate notice to the Exchange and the Committee on Stock List may, thereupon, authorize the registration of such shares and add them to the list.")

Requirements for Listing of Certificates of Deposit, Voting Trust or Stock Trust Certificates, Etc.

(For form of certificates eligible to be listed under this classification, and for list of papers to be furnished, see page 447 et seq.)

Every application for the listing of certificates of deposit, voting trust or stock trust certificates, etc., shall recite:

A. (1) Name of applicant; (2) amount applied for (whether temporary or permanent certificates); (3) depositary; (4) security deposited, and whether listed; (5) registrar.

B. (1) Date or agreement; (2) names of committee, or voting trustees; (3) terms of trust; (4) powers and duties of committee, trustees, or depositary.

C. Reasons for deposit.

D. (1) Duration of trust or deposit; (2) extensions or limitations; (3) final date of deposits; (4) provision for deposits without penalty for approximately thirty days after listing, or if no time limit for deposit of securities without penalty is fixed, an agreement that approximately thirty days' notice of such limitation of time shall be published and given to the Stock Exchange; (5) date of presentation of plan; (6) provisions for dissent and withdrawal; (7) percentage necessary to adoption; (8) pro rata charges; (9) provisions for return of securities (or equivalent); (10) provision for payment of interest, dividends, etc.

E. Applications to list Voting Trust or Stock Trust Certificates to recite financial statements of company as in paragraph R on page 443.

F. Agreement to deliver definitive securities at termination of Voting Trust or Voting Trust to be extended.

G. Agreement to have definitive securities listed.

H. Agreement by Voting Trustees to have company publish its financial statements.

I. Agreements contained on pages 449 and 450.

Note: Applications to list voting trust or stock trust certificates and certificates of deposit for securities not a delivery on the Stock Exchange, must, in addition, comply with the Requirements.)

Applications for each class of deposited securities shall be separate and certificates issued of distinctive colors.

Papers to Be Filed with Applications.

In addition to application for listing, the following papers must be filed:

For stocks:

1. Three copies of charter, with amendments to date, one copy attested by proper public authority.

2. Three copies of by-laws, with amendments to date, one copy attested by an executive officer of corporation.

3. Three copies of leases, franchises, easements and special agreements, one copy of each attested by an executive officer of corporation.

4. One copy of resolutions of stockholders and directors and copy of proper public authority authorizing issue, each attested by an executive officer of corporation.

5. One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion of other securities, attested by an executive officer of corporation.

6. One copy of resolutions of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.

7. One copy of resolutions of stockholders, board of directors, or executive committee attested by an executive officer of corporation, authorizing, by name, official to appear for listing securities (form may be had on application).

8. Opinion of counsel (not an officer or director of the corporation) as to legality of *(a)* organization, *(b)* authorization, *(c)* issue, and *(d)* validity of securities. *The Committee will not accept the opinion of an officer or director of an applying corporation nor of a firm in which the officer or director is a member, as counsel on any legal question affecting*

the corporation; nor will it accept the opinion of an officer or director of a guarantor corporation nor of a firm in which the officer or director is a member, on any legal question affecting the issuance of guaranteed securities.

9. Six copies of detailed distribution of securities, one certified (form may be had on application).

10. One copy of resolution appointing transfer agent and registrar, attested by an executive officer of corporation.

11. Certificate of registrar of amount of securities registered at date of application.

12. Report of qualified engineer covering actual physical condition of property at recent date.

13. Map of property and contemplated extensions.

14. Specimens of all securities to be listed.

15. Questionnaire (form may be had on application).

16. Certified copy of income account, surplus account and balance sheet contained in application.

17. Agreements.

For bonds:

18. All papers required for listing stocks and also ten copies of the mortgage or indenture, one copy *(a)* certified to by trustee, *(b)* with copies of all certificates of proper recording.

19. Trustees' certificate required on page 450.

20. One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion of bonds, attested by an executive officer of corporation.

21. One copy of resolution of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.

22. Certificate of disposition of securities redeemed or refunded.

23. Certificate as to collateral deposited.

24. Certified copy of release or satisfaction of underlying mortgages.

For securities of reorganized corporations:

1. All papers required for listing stocks and bonds. *Opinion of counsel shall state that proceedings have been in conformity with legal requirements, that title to property is vested in new corporation and is free and clear from all liens and incumbrances, except as distinctly specified; and also as to equities of securities of predecessor corporation.*

2. Certified order of court confirming sale on foreclosure or other authority for reorganization.

3. Certified copy of plan of reorganization.

4. Certified income and surplus account and balance sheet at close of receivership, if available.

5. Certified balance sheet at date of reorganization.

For additional amounts:

1. Nos. 4, 5. 6, 7, 8, 9, 11, 15, 16, 17 of papers required for original listings.

2. Nos. 1, 2, 3, 10, 12, 14 of said papers for stock, *if any changes have occurred therein since previous application.*

3. Nos. 1, 2, 3, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 of said papers for bonds, *if any changes have occurred therein since previous application.*

4. Certified copy of proper public authority for increase.

For certificates of deposit, voting trust, etc.:

1. Papers required for listing stocks and bonds.

2. Certified copies of any legal proceedings and court orders.

3. Three copies of deposit or trust agreement, one certified to by proper authority.

4. Three copies of circulars, issued by trustees or committee, one certified to by proper authority.

5. Certificates of amounts deposited.

Agreements.

To be made part of applications where applicable:

1. Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies, unless for retirement and cancellation, without notice to the Stock Exchange.

2. To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and of all constituent, subsidiary, owned or controlled companies.

3. To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

4. To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

5. Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a trustee of its bonds or other securities,

without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the company.

6. To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

7. To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

8. To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

9. To redeem Preferred Stock in accordance with the requirements.

10. To notify the Stock Exchange if deposited collateral is changed or removed.

11. To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

The Committee recommends a date be fixed as record for dividends, allotments of rights and stockholders' meetings, without closing the transfer books.

Notice of rights, allotments, subscription privileges, to bondholders and shareholders, should be as of a date after authorization.

Trustees of Mortgages.

The Committee recommends that a trust company or other financial corporation be appointed trustee of mortgages, indentures, and deeds of trust; and when a State law requires the appointment of an individual as trustee, a trust company or other financial corporation be appointed as co-trustee.

Each mortgage, indenture, or deed of trust should be represented by a separate trustee.

The Committee will not accept as trustee:

(a) An officer or director of the issuing corporation;

(b) A corporation in which an officer of the issuing corporation is an executive officer.

The trustee shall present a certificate accepting the trust and certifying (1) securities are issued under the terms of the mortgage or indenture, giving the numbers, denominations and amount certified; (2) collateral

deposited; (3) disposition of prior obligations. For additional issues of bonds, the trustee must certify that (1) increase is in conformity with terms of mortgage or indenture; (2) additional collateral deposited; and (3) disposition of prior obligations.

The company and trustee shall notify the Stock Exchange of the holding, cancellation, or retirement of securities, by redemption, through the operation of sinking fund or otherwise.

The trustee must notify the Stock Exchange if deposited collateral is changed or removed, and furnish a list of collateral substituted.

A change of trustee shall not be made without the approval of the Committee.

Transfer and Registry.

Every corporation whose securities are listed upon the Stock Exchange must, in accordance with the rules of the Exchange, maintain *(a)* a transfer office and *(b)* a registry office, both in the Borough of Manhattan, City of New York. The transfer agency and registrar *shall not be identical,* and both must be acceptable to the Committee. A company cannot act as registrar of its own stock.

Where a stock is transferred at the company's office, the transfer agent or transfer clerk shall be appointed by specific authority of the board of directors to *countersign* certificates, in said capacity, and shall be other than an officer who is authorized to sign certificates of stock.

The entire amount of the capital stock of a corporation listed upon the Stock Exchange *must be directly transferable* at the transfer office of the corporation in the Borough of Manhattan, City of New York. When a corporation makes transfer of its shares in other cities, certificates shall be interchangeably transferable, and *identical in color and form,* except as to names of transfer agent and registrar; and the combined amounts of stocks registered in all cities shall not exceed the amount authorized to be listed.

Interchangeable certificates must bear a legend reciting the right of transfer in New York and other cities.

The registrar must file with the Secretary of the Stock Exchange an agreement to comply with the requirements in regard to registration and *not to register any listed stock, or any increase thereof, until authorized by the Committee.*

Certifications of transfer and registry must be dated and signed by an authorized officer of the transfer agent and registrar, respectively.

A change in the form of a security, of a transfer agency, or of a registrar, shall not be made without the approval of the Committee.

Forms of Certificates, Engraving, Etc.

General Requirements.

(See Specific Requirements below.)

All securities for which listing upon the Exchange is requested, except as otherwise herein stated must be engraved and printed in a manner satisfactory to the Committee from at least two steel plates by an engraving company whose work the Committee is authorized by the Governing Committee to pass upon; the name of the engraving company must appear upon the face of all securities and also upon the face of coupons and the title panel of each bond. Securities must bear a vignette upon their face.

Said plates shall be: (1) *A border and tint plate* from which should be made a printing in color underlying important portions of the face printing; (2) *A face plate* containing the vignettes and descriptive or promissory portion of the document, which should be printed in black or in black mixed with a color. The combined effect of the impression from these plates must be as effectual security as possible against counterfeiting.

The printing of securities must be in distinctive colors, to make classes and denominations readily distinguishable.

All certificates, except as otherwise stated herein, must provide for transfer and for registration with dates. When a corporation makes transfers of its shares in other cities, certificates shall be identical in color and form, except as to names of transfer agent and registrar; certificates interchangeably transferable must bear a legend reciting the right of transfer in New York and other cities.

The Committee recommends that the text of securities shall provide for transfer in person or by duly authorized attorney upon surrender of the security properly endorsed.

A change in the form of a security, transfer agency, registrar, or trustee of bonds, shall not be made without the approval of the Committee.

The Committee will object to any security upon which an impress is made by a hand stamp, except for a date or power of substitution.

Bonds.

(In addition to the General Requirements above outlined, the following apply specifically to bonds.)

All bonds must be fully engraved and printed in a manner satisfactory to the Committee; face of bonds and coupons must bear a vignette.

The text of bonds should recite conditions of issuance, tax exemption, terms of redemption (by sinking fund or otherwise), convertibility, default, interchangeability or exchangeability of coupon and registered bonds, and conversion into other securities.

Bonds, in the text and on the reverse, must recite payment of principal and interest in the Borough of Manhattan, City of New York, and provide for transfer and registration. Coupons must recite payment of interest in the Borough of Manhattan, City of New York and tax exemption.

Registered bonds must carry a power of assignment in such form as the Committee may approve.

The Committee recommends that registered bonds be made interchangeable with coupon bonds.

Registered bonds interchangeable with coupon bonds shall bear a legend reciting numbers and denominations of coupon bonds, against which they are issued.

If coupon bonds of any denomination are interchangeable with coupon bonds of other denominations they shall contain such recital in the text and bear an appropriate legend on the reverse.

Registered bonds made such by detaching coupon sheets are not eligible for listing.

Forms of Legends for Bonds.

For coupon bonds of one denomination interchangeable with coupon bonds of other denominations:

"As provided in the Indenture, coupon bonds of the denominations of $1,000, $500 or $100, at any time outstanding, when surrendered with all unmatured coupons attached and upon the payment of charges, may be exchanged for an equal aggregate principal amount of coupon bonds of any other denomination of the same issue, of numbers not contemporaneously outstanding, with all unmatured coupons attached."

For a coupon bond of a thousand dollars exchangeable for coupon bonds of smaller denominations:

"The holder of this bond may, at his option, on surrender and cancellation and on payment of charges, as provided in the indenture, receive in exchange coupon bonds of this issue for an amount aggregating $1,000 in denominations of $..... of numbers not contemporaneously outstanding."

For coupon bonds of smaller denominations exchangeable for a $500 or a $1,000 coupon bond:

"The holder of this bond may, at his option, on surrender and cancellation of this bond and others of the same issue aggregating $500 or $1,000 and on payment of charges, as provided in the indenture, receive in exchange a coupon bond of this issue of a number not contemporaneously outstanding, for the amount aggregated."

For registered bond(s) issued for coupon bond(s) of denomination(s) of less than $1,000:

"This bond is issued in exchange for coupon bond(s) of this issue numbered .....in denominations of $.....not contemporaneously outstanding, aggregating the face value hereof and coupon bond(s) of this issue bearing the said number(s) and of the same denomination(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

For registered bond(s) issued for $1,000 coupon bond(s):

"This bond is issued in exchange for coupon bond(s) of this issue numbered.....for $1,000 (each), not contemporaneously outstanding, and coupon bond(s) of this issue bearing the said number(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

Stock.

(In addition to the above General Requirements, the following apply specifically to stock certificates.)

The border and tint plate for one-hundred share certificates of stock shall have *said denomination engraved thereon in words and figures; the plates for smaller amounts shall bear some engraved device whereby the exact denomination of the certificate may be distinctly designated by perforation;* also conspicuously upon the face *"Certificate for less than one hundred shares."*

Certificates for every class of stock shall recite preferences of all classes.

Certificates of stock shall recite (1) ownership; (2) par value; (3) whether shares are *full* paid and (4) non-assessable; (5) preference as to dividends; (6) distribution of assets upon dissolution or merger; (7) terms of redemption; (8) convertibility; (9) voting power, or (10) other privilege; and (11) must bear the following legend:

This certificate is not valid until countersigned by the transfer agent, and registered by the registrar.

The following form is required upon the reverse of a certificate of stock:

For value received.....hereby sell, assign and transfer unto.....
..... shares of the *capital stock represented by the within certificate and do hereby irrevocably constitute and appoint .....attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated....., 19..

.....

In presence of

.....

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.

*On certificates without nominal or par value the word "capital" may be omitted.

Certificates of Deposit, Voting Trust Certificates, Etc.

In addition to the General Requirements above outlined, certificates of deposit and voting trust certificates must conform in every particular to the Specific Requirements as to stock certificates, except that the descriptive portion of a certificate of deposit may be typed satisfactorily to the Committee.

Temporary Certificates or Receipts.

Temporary certificates or receipts must conform to the General Requirements above outlined and to the Specific Requirements as to stock certificates, except that the text may be typed satisfactorily to the Committee, and need not bear a vignette.

Removals or Suspensions in Dealings of Listed Securities

Whenever it shall appear that the outstanding amount of any security listed upon the Stock Exchange has become so reduced as to make inadvisable further dealings therein, the Committee may direct that such security be removed from the list and further dealings therein prohibited.

The Governing Committee may suspend dealings in the securities of any corporation previously admitted to quotation upon the Exchange, or it may summarily remove any securities from the list.

Requirements for Listing Foreign Government Bonds

Data to Be Requested by New York Stock Exchange in Connection with Proposed Listings.

1. *(a)* Statement of debt, internal and external, and currency in which it is to be paid; statement of external debt to be computed in dollars.
   (b) Contingent and actual liabilities, and priority.
   (c) Revenue or assets pledged, if any, under present and other loans, and nature of administration.
   (d) Summary of such revenue receipts and income from such assets for preceding five years, stated in dollars, if available.
   (e) Status of the law under which said revenue or assets are pledged.
2. Past debt record with respect to:
   (a) Defaults.
   (b) Scaling down interest payments.
   (c) Suspending sinking fund payments.
3. Where listed.
4. Currency in which interest and principal are to be paid.
5. Tax liability and exemption.
6. Statement of governmental income and expenditure for whatever account in the preceding five years.
7. Statement of the sums required in dollars to meet foreign interest charges in each of the five preceding years.
8. Statement in terms of weight and dollars (converted) of merchandise imports and exports in each of the preceding five years.
9. Statement of covenants, if any, with respect to payment of principal and interest of bonds dependent upon state of Peace or War and nationality of holder.

INDEX

A

Acceptance of trust, 152
Accountants, approval by trustee, 111
Addressograph plates, 57, 63, 65, 261
Administration department, 6
Administrator's transfer of stock, 247, 248
Adoption of plan of reorganization, 207
After-acquired property clause, 77
American share certificate, 178, 179
Analysis of departmental income and expenses, 302
Application for bonds. See Bond Issue.
Assessments, in reorganization, 208
  time limit, 211
  underwriting of, 208
Assignment of stock, 243
Assumption of mortgage, 158, 159
Attorney for transfer of stock, 243
Audit department, 6
Audit of securities, 45, 255, 277, 296
Authentication. See Certification.
"Authorized" issues under mortgages, 90

B

Balance sheet, prerequisite to bond issue, 96
Baltimore & Ohio Railroad Company, 2
Bankers, activities in reorganization, 190, 191
  supervision by, 163
Bank. See Trust Company.
Bankers' share certificates, 175, 176, 177
Bankers Trust Company v. Denver Tramway Company, 117
Banking department of trust company, 4
Banking institution, executives of, 7
Bearer certificates, 179
Bibliography, 319
Billing of fees, 312
Blotter for Corporate Trust securities, 47, 48
Bond department, 6
Bondholders' committee, may consent to change in mortgage, 142
  relation with trustee, 146
Bondholders', reluctance to deposit, 197
  rights as to redemption, 123
Bond issue, acquisition of property, 90
  acquisition of securities, 92
  adjustability, 78, 79
  against cash, 97
  balance sheet required, 96
  capital expenditure reimbursement, 91
  certificates of officers, etc., 95
  consent of junior trustee, 101
  counsel's opinion, 96, 99
  delivery entries, 39, 56
  earnings statement required, 96
  for immediate needs, 91
  indeterminate, 78
  initial, 91
  in series, reasons for, 78
  net earnings as prerequisite, 95
  order for delivery, 95
  pending construction, 92
  percentage of property cost, 94
  permanent additions, 91, 93, 94
  principal purposes, 91
  provided no default, 94
  receipt for delivery, 99
  refunding, 92-93
  resolution to authorize, 95
  restrictions, 94
  to refund, 91
  under corporate mortgage, 90
Bond of indemnity, against duplicate bond, 87
  against duplicate stock certificate, 269
  as affecting registrar, 277
Bond owner, who is deemed, 85
Bond payment agent, 185
Bond registrar, appointment of, 278
  duties, 279
  fees, 309
  records of, 281
Bond registration. See Registration of bonds.

Bonds
authorized issues, 78
collateral trust, 16
comparison of, 76
convertible, 17
cremation of, 162
described, 75, 76
destroyed, 85
disposition after endorsement on foreclosure, 151
equipment, 16
exchange of denominations, 84, 85
execution of, 83
foreign currencies, 18
form of, 79, 80, 81
franc, 18
full registration, 280
gold, 18
guaranteed, 18
issuance before recording, 89
joint, 18
limitations to amount issued, 78
lost, 85
mutilated, 85
outstanding, defined, 117
participating, 17
registration as to principal, 281
serial, 17
signatures to, 83
sinking fund, 17
specimen of, 29
stamped after foreclosure sale, 147, 150
sterling, 18
stolen, 85
unsecured, 17
See Mortgage.
Bond title, illustration of use, 18
Bond transfer agent. See Bond Registrar.
Bookkeeping department, 4
Breach of covenants, trustee's procedure, 112
By-Laws of corporation, 28, 233

C

Called bonds, affecting coupon-paying department, 298
coupons from, 298
"Calling" bonds. See Redemption.
Canceled bonds, audit of, 45
Canceled coupons, retention of, 300
Canceled stock certificates, destruction of, 269
Cancellation memorandum, 60
Cancellation tickets discussed, 55
Capital expenditures, bases for sinking fund withdrawal, 121, 122
reimbursement by bond issue, 91
Capital subscription, 215
discussed, 189
fees, 310
papers required, 219
Cash deposited against bond issue, 97
journal, 68
ledger, 67
records, 66
tickets, 68, 69, 70
under equipment trust, 166
with other banks, 98
Cash deposit for interim receipts, 171
Certificate of deposit, for bonds, 194
for stock, 195
listing of, 197
of other committees, 201
registration of, 198
Certificates of indebtedness, issuance against lost bond, 87, 88
Certification, blotter, 47, 49
charges, 303, 304
essential to validity, 83
slip, 49
trustees' responsibility, 90
Charter of corporation, certificate of incorporation, 27, 233
Check register, Coupon Department, 292
Classification of stock, 227
"Closed" mortgage, 90
Closing of transfer books, 260
"Closing" transaction explained, 91, 92
Collateral, fees for holding, 305
Collateral to mortgage. See Pledged Securities.
Collateral trust indenture, 168
Collection of coupons, discussed, 293
Collection register, 57-58, 64, 66, 68
Commission bill, 315
Commission ledger, 313
Commission. See Fees.
Commission work sheet, 313, 314
Committee on Stock List, rules of, 441
Common stock certificate, 228, 231
Compensation, 302
Comptroller, 7
Conditional sale plan of equipment trust, 165
Consolidation, or merger, of mortgagor, 158
of trustee, 158

Constitution of United States, Art. IV, Sec. 2, 23
Contract of conditional sale, 165, 167
Controlled companies. See Subsidiary Companies.
Control sheet for unissued stock certificates, 259
Control system for securities. See Vault Control.
Conversion of bonds, fees, 306
Conversion privilege for unsecured issues, 169
Conversions, 185
Corporate agencies, fees, 308
  scope, 9
  services, scope of, 187
Corporate blotter, 48
Corporate Fiduciaries Association of New York, activities and fees, 303
  report on lost and stolen securities, 87
Corporate Fiduciaries, early history, 1
Corporate mortgage. See Mortgage.
Corporate trust department, fees, 303, 304, 305
  functions, 9
  records, 34
Corporate trustees, qualifications, 19
Corporate trusts, acceptance of, 22
  development, 2
  scope, 9
  securing business, 22
Corporation, By-laws, 28, 233
  charter, 27, 233
  transfer of stock, 247
Correspondent banks, payments for, 186
Co-transfer agencies, 251
Counsel for Protective Committee, advisability of trustees counsel acting, 192
Counsel's opinion, bond issue, 96, 99
  lien of mortgage, 28, 29
  recording and filing, 29
Counter receipt, bond registrations, 282
  exchanges, 41
  reorganization, 220
  Transfer Department, 252, 253
Coupon account,
  audit, 296
  collection, methods of, 293
  statement and verification, 295
Coupon, envelope for, 291
  ledger, 294
  money, return of, 301.
Coupon paying, 287
  payments for correspondents, 296
  receipts of funds, 288
  return envelope, 292
  statement, monthly statement and receipt, 298
Coupon paying agent, scope, 11
Coupon Paying Department, billing, 316
  records of, 291
  relations with Corporate Trust Department, 288
  accounting at each maturity, 289
Coupons, accounting for, 161
  cremation of, 162
  facsimile signature, 83
  form of, 81
  from called bonds, 298
  on interim receipts, 175
Covenants, appraisal, 111
  balance sheet, 110
  breach of, 112
  earnings statement, 110
  equipment statement, 111
  Federal Income tax, 104
  financial statements, 110
  "formal," 103
  insurance, 106, 108
  maintenance and renewal, 111
  mortgagor's, 102
  net quick assets, 108, 109, 110
  railroad equipment trust, 166, 167
  reasons for, 102
  restricting bond issue, 109
  restricting dividends, 109
  sales certificate, 111
  State taxes, 104
  taxes, 104
  to be calendared, 112
  trustee's interest in, 102
  underlying bonds, 104
  value of, 113
Credit Department, 4
Cremation, certificate of, 163
  of bonds, fees, 307
  of canceled stock certificates, 269
  of coupons, fees, 307
  of securities, 162
Custody of securities, 7
Customers' verifications. 61, 65, 66

D

Debentures, 17
issues, 169
Declaration of trust by nominee, 130
Decree of foreclosure, 150
Deed of trust, for foreign insurance companies, 180, 181, 182
See Mortgage.
Default, bearing on pledged securities, 132
events of, 143
period of grace, 146
procedure of trustee, 145
Defaults and remedies. See Foreclosure.
Defeasance, 159, 160
Defeasance clause, 77
Deficiency judgment, 148
Definitions of mortgage terms, 162
Delivery record of Reorganization Department, 224
Denver Tramway Company case, 117
Deposit agreement, described, 194
expenses and compensation of committee, 196
form of, 423
parties to, 195
provisions governing withdrawal, 196
terms of, 195
Depositary, appointment of, 10
under escrow agreement, 183
Depositary for Protective Committee, acceptance of, 196
action regarding deposited securities, 209
functions prior to reorganization, summarized, 202, 204
relationship with committee's secretary, 199
termination of duties, 211, 212
Deposited securities, withdrawal of, 207
Deposit in trust, for holders of interim receipts, 89
of cash, with sub-depositaries, 98
of securities, time limit, 204, 205
of temporary withdrawal ticket, 58, 59
Destroyed bonds, 85
stock certificate, 268
Destruction of canceled securities, 162
Development Department, 4, 32
Directors of mortgagor, immunity of, 164
resolutions of authorizing mortgage, 28
shares, 131
Disbursements, chargeable to principal, 318
voucher, 316
Dissents from reorganization plan, 206
Distribution after foreclosure sale, 150, 151
Distribution of new securities following reorganization, 210
Dividends, check, 263
disbursing agent of, appointment, 263
fees, 309
from pledged securities, 131
order, 261, 262
payment of, 261
stock, 266
warrants on equipment trust certificates, 167
Division between trusts and agencies discussed, 187
Document index, 39
executed slip, 73
Documents supporting mortgage, 27, 31, 32
Dollar control for securities, 54
Duplicate bonds, issue of, 85
Duplicate certificates of stock, affecting registrar, 278
affecting transfer agent, 268

E

Earnings statement, prerequisite to bond issue, 96
Eminent domain, power of, 138
Engineers, approval by trustee, 111
Equipment trust, form of, 395
purpose of, 165
Escrows, 183
Exchangeability of bonds, legend for, 82
Exchange of temporary bonds, 42
of temporary securities, 307
record title sheet, 43
record, use of, 42
sheet, 39, 40
ticket, 41, 42
Executors and transfer of stock, 248
Expenses, reimbursement of, 318

F

Farmers' Fire Insurance & Loan Company, 1
Farmers' Loan & Trust Company, 1
Federal Reserve Act, 3
  amendment, 3
  Supreme Court decision, 4
Federal Revenue Act stamp taxes. See Tax.
Fee records, 312
Fees, 302
  in New York City, 311
Fiduciaries, early history, 1, 2
  transfers of stock, 247
Fiduciary group of trust company, 7
Fiscal agent, appointment of, 289
  fees, 309
  for municipalities, 185
"Follow-up" card, 70, 74
Foreclosure, decree, 150
  procedure of trustee, 146
  purchase by reorganization committee, 209
  sale under, 147
  trustee's activities, 148, 149
  trustee's computation of amount due, 149
Foreign corporation issues, fees, 308
Foreign department, 6
Foreign government issues, fees, 308
Foreign insurance companies, fee of trustee, 307
Foreign insurance trusts, 179, 180
French bearer certificates, 179

G

Grace in event of default, 146
Granting clause of mortgage, 77
Guarantee of signatures on stock transfers, 244
Guardians, transfer of stock by, 249

H

History of trust sheet, 35, 39
  supplementary sheet, 36

I

Identification of signatures on stock transfers, 245
  registration for, 184
Income Tax, Federal. See Tax.
Indemnity, Bondholders' Committee to trustee, 147
  letter, covering lost dividend check, 265
  See Bond of Indemnity.
Indenture. See Mortgage.
"Indeterminate" mortgage, 90
Individuals and partnership, transfers of stock, 246
Individual trustees, as co-trustees, 19, 23
  appointment of attorney-in-fact, 157
  appointment of successor, 157
Individual trusts, 7
Industrial note issues, fees, 307
Inspection of stock records, by stockholders, 260
Insurance, covenants of, 108
  deed of trust, 180, 181, 182
  policies, 108
  record, 107
  trusts of foreign companies, 178, 179
  under corporate mortgage, 106
Interest, allowance on cash balances, 156
  from pledged securities, 131
  loss on bonds called for redemption, 125, 126
  payments on deposited bonds, 200
  payments on registered bonds, 84
Interim certificates, exchange of, 89
  purpose of, 88
  receipt, form of, 173, 174
  registration of, 89
  segregation of proceeds, 89
  use of, 170
  See Interim Receipts.
Interstate Commerce Commission, application to abandon mileage, 139
  approval of bond issue, 98
  approval of stock issue, 240
Investment, of cash for mortgagor, 97
  of sinking fund, 115
Investment trust, 177
Investments in United States, 3
Issue of bonds. See Bond Issue.

J

Joint facilities, 11
Joint reorganization committee, 207
Junior security holders, treatment of in foreclosure, 147, 148
  on reorganization, 208

L

Large v. small companies, comparison of practice, 187
Lederer v. Fidelity Trust Co., 167
Legend on fully registered bonds, 84
Letter of instructions, escrow, 183
  interim receipts, 170, 171
Liability of trustee, reasons for limitation, 153
Liens, conflicting, 25
Limitations on bond issues, 90
"Limited open end" mortgage, 90
Loan Department, 4
Loose leaf records, advantages, 34
Loss of securities, acknowledgment of, 87
Lost bonds, 85
Lost dividend check search sheet, 264
Lost stock certificate, 268

M

Mailing redemption notice, 125
Maintenance and betterment fund, 122
Management of trust company, 7
Massachusetts income tax covenant, 104
Memoranda tickets for cash, discussed, 66
Merger affecting pledged securities, 134
  of mortgagor, 158
  of trustee, 157
Miscellaneous provisions of mortgage, 158
  trust functions, 170
Mortgage, acknowledgment to, 164
  bondholders and change of terms in, 142
  counterparts, 27
  defeasance clause, 77
  defined, 12
  examination guide, 30, 31
  examination of draft, 25
  execution, 27, 164
  fees of trustee, 303
  first, 14
  first and collateral, 15
  first and refunding, 14
  form of, 333
  general, 15
  granting clause, 77
  habendum, 77
  income, 16
Mortgage (continued)
  "In trust, nevertheless," 77
  leasehold, 15
  meaning, as used herein, 18
  parties, 75
  preamble, 75
  prior lien, 15
  purchase money, 15
  rank of, 13
  recording, 27
  recording data, 39
  refunding, 15
  release and discharge, 160
  satisfaction of, 160
  second, 14
  tax, 29
  various types, 12, 13, 14, 15, 16
Mortgaged property, abandonment of, 138
Mortgagor, financial standing not warranted by trustee, 151
  merger or consolidation, 158
  rights as to redemption, 123
Mutilated bonds, 85

N

Name on stock certificate, 244
Net quick assets covenant, 158
  defined, 109, 110
New business, department of. See Development Department.
  Investigating proposals of corporate trust agencies, 23, 188
  solicitation of, 8
New York & Erie Railroad Company, 2
New York Life Insurance & Trust Company, 1
New York Stock Exchange listing requirements, 441
  requirements for registrar, 10
Nominee, card, 130
  for pledged securities, 129
Note issues, 169
Notes. See Bonds.

O

Obligations. See Bonds.
Officers, certificate of election, 28
  of mortgagor, immunity of, 164
"Open end" mortgage, 90
Original issues of stock, record of, 259
Ownership of bonds, evidence of, 159
  listing and filing of, certificates, 295

P

Partial releases of property. See releases of property.
Paying agent, for banks and trust companies, 186
for bonds, 185
of coupons, fees, 309
registered interest, fees, 309
Payment of bonds, mechanics of, 45
of coupons for correspondents, 296
of coupons. See Coupon Paying.
on deposited bonds during reorganization, 200
Pending card, 70, 74
Pennsylvania Company for Insurances on Lives, etc., 1
Pennsylvania "four mills" tax, 104, 105
Personal property taxes, refund of, 104, 105
Personal trusts, 7
Philadelphia plan equipment trust, 165
compared with conditional sale agreement, 167
form of, 395
Plan of reorganization. See Reorganization.
Pledged securities, control of, 128
disposition of income, 131
payment on account principal, 132
possession of, 129
registration, 129
relative rights of trustee and mortgagor, 128, 129
subject to other mortgages, 131
under collateral trust, 168
use of nominee, 129, 130
voting rights discussed, 132, 133
Power of substitution for transfer of stock, 243
Preamble of mortgage, 75
Preferred stock certificate, 232
Prior mortgages, closing, 33
trustees, notice to, 33
Proof sheet of cash transactions, 66, 71
Property cards, 62
discussed, 56, 57
Property covered by mortgage, 77
Protective agreement. See Deposit agreement.
Protective clauses. See Trustee Clauses.
Protective committee, final instructions to depositary, 212
formation of, 190, 191
Protective Committee (continued)
form of deposit agreement, 323
form of notice to bondholders, 192, 193
loans against deposited securities, 200
represents one class of securities, 190
secretary's duties, 191
trustee's relations with, 191
Proxies for pledged stock, 133
Publication of redemption notice, 125
by protective committee, 192, 198, 199, 206
Public bodies, approval of bond issue, 98, 100
Service Commission and approval of mortgage, 28
Purchase of bonds, fees, 306
Purchase certificate for stock, 217, 218
Purchases for sinking fund, 116, 118

Q

Qualifying shares, 131

R

Readjustment and reorganization, compared, 213, 214
defined, 189, 213
maintenance of original position by securityholder, 214
Receivership, bearing on release of property, 140
Recitals of mortgage, 75
Reconcilement sheet of Corporate Trust Department, 66, 71
Record of bonds issued, 37
Record of depositors, 222
Record of original issues, by transfer agent, 257
by stock registrar, 277
Record of trusts, 36
Redeemed bond notice, Coupon Department, 299
Redemption of bonds, affidavit as to mailing notice, 125
affidavits as to publication, 125
fees, 306
form of notice, 124
for sinking fund, 120
interest loss through non-collection, 125, 126
large drawing discussed, 123
rights of bondholder, 123
rights of mortgagor, 123

Redemption records, 44, 45, 69
Refunding of underlying bonds, 92, 93
Refund of personal property taxes, 105, 106
  fees, 307
Registered interest, payment of, 284
  record of, 287
Registrar, appointment of, 10, 273
  for identification, 184
  of bonds, fees, 309
  of stock, 272
  records of, 275
  relations with transfer agent, 274
  scope, 10
Registration, of bonds as to principal, 281
  department billing, 316
  fees, 309
  full registration, 280
  mechanics of, 83, 84
  of principal, form for, 82
  records of, 284
Release of mortgage, 160
Release of property, 134
  application of proceeds, 139
  deferred payments, 138
  documents required, 137
  during receivership, 140
  fees, 307
  form of application, 136
  restrictions imposed, 135
  substitution of property, 137
  underlying lien, 139
Remedies. See Foreclosure.
Rentals, under "Philadelphia Plan," 167
Reorganization, affecting pledged securities, 134
  committee, joint, 207
  consummation of, 209
  counter ticket, 220, 221, 226
  defined, 188, 189
  department, relations with trustee, 189, 190
  distribution of securities, 210
  fees, 310
  initial steps, 190
  organization of new company, 210
  plan and agreement, discussed, 211
  plan, as to dissenting depositors, 206
  presentation of, 206
  records, 220-226
  scope of activities, 10, 188
Reorganization (continued)
  time limit for payment of assessments, 211
Research sheet for bond issues, 99, 100
  use of, 90
Restrictions on bond issue, 94
Return of coupon money, 301
Return to Collector of Internal Revenue, covering interest paid, 289, 290
  fees, 309
"Rights" to subscribe to stock, 215
Russian Reinsurance Company v. Stoddard, 183

S

Sale under foreclosure, 147
Sale of mortgaged property. See Release of Property.
Satisfaction, guide, 160, 161
  fees of mortgage, 307
Scrip, use of, 268
Securities, blotters, 60, 61
  held by American public, 3
  ledger, 46, 47
  transactions, 47
Security-holders. See Stockholders or Bondholders.
Signatures, on bonds, 83
  on stock certificates, 233
Sinking Fund, acceptance of tenders, 119
  acquisition of bonds, 116
  application of, 118
  applied to various series, 121
  bases for, 115
  bonds in lieu of cash, 120, 121
  comparison of prices, 119
  disposition of bonds acquired, 120
  investment of, 115
  inviting tenders, 118
  measure of payment, 117
  notice, 118, 119
  operation of, 115
  payment of accrued interest, 120
  payment of expenses, 120
  redemption of bonds, 120
  rejection of tenders, 119
  relative to type of business, 114
  tender by mortgagor, 120
  to amortize debt, 114
  withdrawal for capital expenditures, 121, 122
Specimen bond, 29

"Split" ticket, 55, 61
Stamping of bonds after sale under foreclosure, 147, 150
Stamp taxes. See Tax.
Standardization of fees, 303
Statement and receipt of Coupon Department, 298
State statutes, California, 24
Indiana, 24
Missouri, 24
restrictive as to foreign trustees, 24
Statistical Department, 6
Statute of Limitations regarding endorsement of stock, 269
Stencils, 57, 63, 65, 261
Stock, assignments of, 243
classifications of, 227
original issues of, 239
Stock certificates, 227, 232
forgery of endorsement, 269
issued sheet, 317
signatures on, 233
Stock dividends, 266
record, 267
Stockholders, certificate of consent to mortgage, 28
list, 261
meetings, 260, 261
of mortgagor, immunity of, 164
reluctance to deposit, 197
resolutions authorizing mortgage, 28
right to inspect records, 260
Stock Registrar. See Registrar.
Stock Transfer. See Transfer of stock.
Stolen bonds, 85
stolen stock certificate, 268
Stop payments, against bonds, 86
against coupons, 300
Stop transfers, affecting registrar, 278
affecting transfer agent, 270
Sub-depositaries, reorganization of, 196
Subscription record, 225
Subscription to securities, warrant, 215, 216, 217
without issue of rights, 219
Subsidiary companies, pledged stock of, 133
Substitution of collateral under collateral trust, 169
power of, 243
Successor trustee, 157
Summary sheet for bond issues, 38
Supplemental indentures, fees, 307
purposes of, 141, 142
Supporting documents. See Documents.
Supreme Court, Federal Reserve Act decision, 4
Surety bond. See Bond of Indemnity.
Switzerland General Insurance Co. v. New York Central, 87
"Symbols" for collection register, 58, 59

T

Tax deduction ticket of Coupon Department, 294
Taxes, estate and inheritance, 251
"Tax-free covenant" bonds, 104, 289
Tax, in various states, 250
legend on bonds, 99
on bond issue, 99
on original issues of stock, 240
on stock transfers, Federal, 250
Tax returns by Coupon Paying Department, 290
Tellers, 4
Temporary bonds, deposit tickets, 54
exchange of, 89
form of, 88
interest stamp, 99, 100
Temporary deposit ticket, receipt of Reorganization Department, 221
securities, 54, 55
withdrawal ticket of securities, 54, 56, 57
Tenants, in common, 246
joint, 246
Tenders of bonds, acceptance or rejection, 119
for sinking fund, 118
Tickler card, 70, 73
Transfer agent, stock, appointment of, 10, 233
billing, 316
papers for appointment, 233
records, 252
resolution appointing, 234, 326
scope of, 10
Transfer agent of bonds. See Registration of bonds, and Bond Registrar.
Transfers of stock, classification, 246
closing of books, 260
corporations, 247
fiduciaries, 247, 248
individuals, 246

Transfer of Stock (continued)
methods of, 255
partnerships, 246
"powers," 242
records, 252
requirements, estate transfers, 248
tenants, 246
trustees, 249
Trial balance for stock ledger, 257
Trust checks, 68, 72
Trust companies, development of, 2, 3
early history, 1
executives, 7
organization, 4
organization chart, 5
reference includes other financial institutions, 3
supervision in New York, 2
Trustee, certificate, 81
certificate to identify bond, 83
clauses, 152
corporate, 23
customary provisions, 154, 155
examination of mortgage, 32
individual, 19, 23, 157
liability of, 152
may rely on officers' certificate, 156
merger of, 157
payment of interest, 156
purpose of, 153
qualification in states, 23
removal of, 156, 157
representation on Protective Committee, 191
resignation of, 156, 157
responsibilities, 20, 90
scope of duties, 19, 20, 99
Trusteeships, investigation of, 23
Trust indenture. See Mortgage.
Trust Investment Committee, 8

U

Underlying bonds, canceled, 93
stamping, 93
Underlying lien, as to release of property, 139
Underlying mortgage, satisfaction, 93
Underwriting of bond issue, 22
reorganization, 208
Unissued certificates, control sheet, 259
Unit control for securities, 50
Unsecured issues, 169
U. S. Constitution, Art. IV, Sec. 2, 23

V

Vault, control, 50, 51, 52, 53
delivery ticket, 52, 53
deposit ticket, 50, 51
index card, 74
marker, Reorganization Department, 223
tickets, use of, 56
Voluntary readjustment, 213
Voting pledged stock, 132
Voting trust certificates, 241
dividends on, 241
registration of, 277
transfer agent for, 240
Voting trustees, relations with, 241

W

Warrants to subscribe to stock, 215, 216, 217
Withdrawal of deposited securities, 207